TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 657.

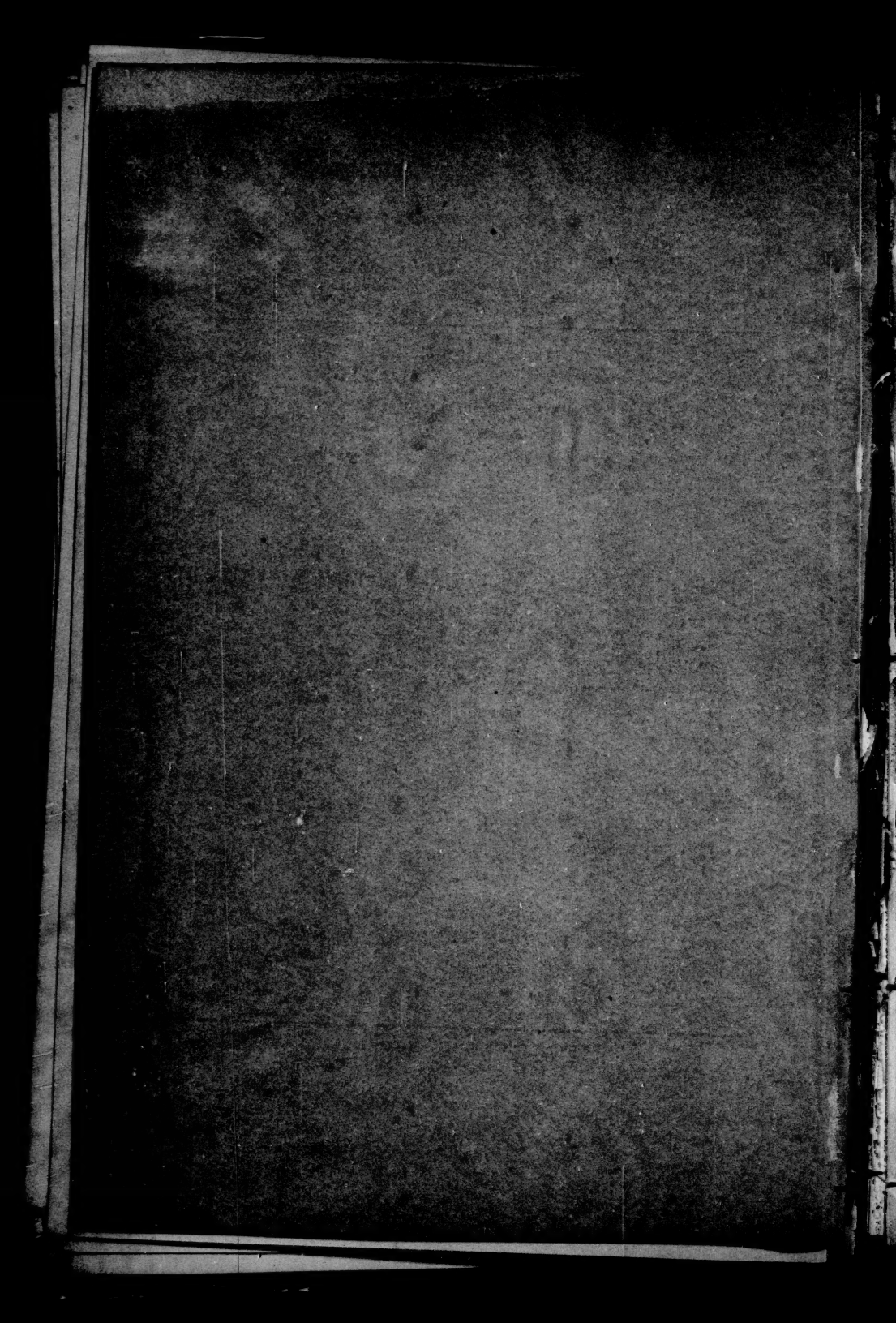
GEORGE S. WELLS, SAMUEL MYERSON, BARBARA WELLS (INTERVENOR), AND WILLIAM J. CARO, EXECUTOR OF E. J. CARO, DECEASED, M. C. DUVAL AND IRENE C. WILLIAMS (INTERVENTORS AND WARRANTORS), PLAINTIFFS IN ERROR,

vs.

W. H. HUTCHINSON, SHERIFF AND *EX-OFFICIO ADMINISTRATOR DE BONIS NON* OF JAMES RUSHTON, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA

FILED OCTOBER 10, 1884.



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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the northern district of Florida, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, between W. H. Hutchinson, sheriff and *ex-officio* administrator *de bonis non* of the estate of James Rushton, and George S. Wells, Samuel Myerson, Barbara Wells (intervenor), and E. J. Caro, M. C. Duval, and Irene C. Williams (intervenors and warrantors), a manifest error hath happened, to the great damage of the said George S. Wells, Samuel Myerson, Barbara Wells (intervenor), and E. J. Caro, M. C. Duval, and Irene C. Williams (intervenors and warrantors), as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of October next in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right
2 and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 14th day of March, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal U. S. circuit court northern district of Florida, 5th circuit.]

(Signed) F. C. HUMPHREYS,
Clerk of the Circuit Court of the United States for the Northern District of Florida, at Pensacola, Florida.

3 UNITED STATES OF AMERICA, *Northern District of Florida:*

To the Honorable Justice of the Supreme Court of the United States:

And now come George S. Wells, Samuel Myerson, John White, N. Nichols, Mark Fuller, Henry Muller, Otto Goldstucker, and Barbara Wells, intervenor, and E. J. Caro, M. C. Duval, and Irene C. Williams, intervenors and warrantors, citizens of the State of Alabama, so far as the said E. J. Caro, M. C. Duval, and Irene C. Williams, and the said other parties herein claiming under title from the United States, by their attorneys, Elliott, Tucker & Thompson and Simeon Belden, and complain that in the record and proceedings and also in the renditions of judgment in a suit between W. H. Hutchinson, sheriff, &c., administrator of the estate of James Rushton, deceased, plaintiff, and George S. Wells and the others aforesaid, defendants, tried in the circuit court of the United States for said district at the March term thereof, A. D. 1874, at Pensacola, Florida,

and in which judgment was rendered against said defendants on the 11th day of March, A. D. 1884, manifest error hath occurred and happened to the great damage of said defendants, wherefore they pray for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court aforesaid.

ELLIOTT, TUCKER & THOMPSON &
SIMEON BELDEN,
Attorneys for Plaintiffs.

4 UNITED STATES OF AMERICA, *ss:*

To William H. Hutchinson, sheriff and *ex-officio* administrator &c., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth judicial circuit, northern district of Florida, wherein George S. Wells and Mark Fuller and Barbara Wells and Edward J. Caro, Matilda C. Duval, and Irene C. Williams (intervenors), are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgement in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 14th day of March, in the year of our Lord one thousand eight hundred and eighty-four.

THOMAS SETTLE, *Judge.*

5 On this 22d day of March, in the year of our Lord one thousand eight hundred and eighty-four, personally appeared before me the subscriber, Martin O'Conner, U. S. dep. marshal, and made oath that he delivered a true copy of the above citation to W. H. Hutchinson, sheriff and *ex-officio* administrator *de bonis non* of the estate of James Rushton.

[SEAL.]

MARTIN O'CONNOR,
U. S. Deputy Marshal.
F. C. HUMPHREYS, *Clerk.*
By JAMES L. ROCHE,
Deputy Clerk.

United States Circuit Court, Fifth Judicial Circuit, Northern District of Florida.

WM. H. HUTCHINSON, SHERIFF, &C.,
vs.
GEORGE S. WELLS & SAMUEL MYERSON *et als.* } No. 62.

On motion of Mess-. Elliott, Thompson and Tucker and Simeon Belden, attorneys for defendants herein, and who are also attorneys for the defendants in the following causes, entitled: No. 62, W. H.

Hutchinson, sheriff, &c., *vs.* Geo. S. Wells *et al.*; No. 63, W. H. Hutchinson *vs.* Otto Goldstucker *et als.*; No. 64, W. H. Hutchinson, sheriff, &c., *vs.* N. Nicholls *et al.*; No. —, W. H. Hutchinson,
6 sheriff, *et al.*, John White *et al.*, W. H. Hutchison, sheriff, &c., *vs.* Henry Muller, Mark Fuller, *et al.*

In all the above-named causes it is ordered that the pleadings and evidence and bill of exceptions introduced, taken, and filed in the above-entitled suit of W. H. Hutchinson, sheriff, &c., *vs.* George S. Wells, Samuel Myerson, *et al.* be admitted in the five following and above-enumerated case-, the same *the same* as though regularly introduced on trial.

March 14th, 1884.

THOMAS SETTLE, *Judge.*

7 In the United States Circuit Court, Fifth Judicial Circuit, Northern District of Florida, sitting in and for said circuit, March Term, A. D. 1884.

Be it remembered that at a term of the United States circuit court, fifth judicial circuit, northern district of Florida, held at the city of Pensacola, Florida, on the third day of March, in the year of our Lord one thousand eight hundred and eighty-four, a cause therein pending, wherein William H. Hutchinson, sheriff and *ex-officio* administrator *de bonis non* of the estate of James Rushton, deceased, was plaintiff, and George S. Wells and Samuel Myerson and Barbara Wells (defendant by intervention), and Edward J. Caro, Matilda C. Duval, and Irene C. Williams (defendants by intervention as warrantors) were defendants, came on to be heard before the Honorable Thomas Settle, judge of the United States district court, northern district of Florida, sitting as judge of said United States circuit court, at which day came the said parties by their respective attorneys.

And thereupon the said issue, in manner aforesaid, joined between the said parties, came on to be tried, and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came and were sworn to try the said issues in manner aforesaid joined, and whereupon the plaintiff, to maintain the issues on his part, after having, without objection, produced and offered in evidence an extract from the "American State Papers," page — of vol. 4, containing the proceedings of the United States commissioners, showing
8 the confirmation of the lot —, square 4, in the city of Pensacola, to John Edgeley, which extract reads as follows: No. 1. By whom claimed, John Edgeley; original grantee, Maria Rivas; nature of claim, mesne conveyance; date of claim, July, 1797; No. 1; dimension of lot, 40 feet front by 120 deep; before whom passed, Gove-nor Folch; built upon and enclosed from 1781 to 1823. The said plaintiff produced and offered in evidence a certain written instrument purporting to be a certified copy of a deed of conveyance from John Stevenson to John Tolbert; also a certain written instrument purporting to be a certified copy of a deed of conveyance from said John Tolbert to Benito Caro; also a certain written instrument

purporting to be a certified copy of a deed of conveyance from said Benito Caro to Gabriel de Rivas; also a certain instrument purporting to be a certified copy of a deed of conveyance from Maria Moreno Rivas to Touns & Co.; also a certain written instrument purporting to be a certified copy of proceedings before the Spanish tribunal, authorizing the said Maria Moreno Rivas, as executrix of the aforesaid Gabriel de Rivas, to make said conveyance to Touns & Co.; also a certain written instrument purporting to be a certified copy of a deed of conveyance from John Edgeley, as surviving partner of Touns & Edgeley, to James Rushton, but to the reading of the same in evidence the attorney of the said defendants did then and there object, because—

First. The papers offered in evidence and purporting to be certified copies of original deeds are not the best evidence of
9 which the case is susceptible.

Second. That being copies they cannot be received in evidence until the original deeds of which they purport to be copies have been produced or their loss accounted for.

Third. That there is no evidence that the records from which the papers offered purport to have been copied are the Spanish archives transmitted and turned over to the Government of the United States by the government of Spain under the treaty of the year 1819, by which the Floridas were ceded by Spain to the United States.

Fourth. That there is no evidence that Filo E de la Rua, whose certificate as keeper of Spanish archives is affixed to the papers offered in evidence is, or ever has been in possession of the Spanish archives, and that until evidence is introduced to show that the United States Government had parted with its possession and custody of said archives and had surrendered them to the State of Florida or to said de la Rua, the documents offered as copies from said archives cannot be received in evidence; but the said judge did then and there deliver his opinion and decide that the objections ought not to be allowed, and that the said writings ought to be admitted in evidence on the part of the said plaintiff, and thereupon permitted the said writing to be read in evidence on the part of
10 the plaintiff to which said opinion and decision the attorney for the said defendants, in their behalf, did then and there except.

And the said plaintiff, by his attorneys, further to prove the issue in his behalf, then and there produced and offered in evidence a certain written instrument purporting to be a certified copy of the last will and testament of Gabriel de Rivas, but to the reading of the same in evidence the attorneys for the said defendants did there and then and there object, because—

First. The paper offered in evidence and purporting to be a certified copy of the last will and testament of the said Gabriel de Rivas, is not the best evidence of which the case is susceptible.

Second. That being a copy it cannot be received in evidence until the original document of which it purports to be a copy has been produced or its loss accounted for.

Third. That there is no evidence that the records from which the

paper offered purports to have been copied are the Spanish archives, transmitted and turned over to the Government of the United States by the government of Spain, under the treaty of the year 1819, by which the Floridas were ceded by Spain to the United States.

Fourth. That there is no evidence that Filo E de la Rua whose certificate as keeper of Spanish archives is affixed to the papers
11 offered in evidence, is or ever has been in possession of the said Spanish archives, and that until evidence is introduced to show that the United States Government had parted with its possession and custody of said archives and had surrendered them to the State of Florida or to said de la Rua the document offered as a copy from said archives cannot be received in evidence; but the said judge did then and there deliver his opinion and decide that the objections ought not to be allowed, and that the said writing ought to be admitted in evidence on the part of the said plaintiff, and thereupon permitted the said writing to be read in evidence on the part of the plaintiff; to which said opinion and decision the attorney for the said defendants, in their behalf, did then and there except.

And the said plaintiff, by his attorneys, further to prove the issue in his behalf, then and there produced as a witness one G. O. Brosnaham, who testified in substance as follows:

That he, witness, had heretofore been the agent of the heirs of James Rushton; that he came to the agency by reason of the fact that he was his father's executor, and that his father during his lifetime had been the agent of Mrs. Hannah Rushton, whom witness
believes to have been the widow of James Rushton. Witness
12 has no knowledge of his father having ever been the agent of James Rushton, but from letters from Mrs. Hannah Rushton and other documents found amongst his father's papers he formed the belief that his father had been the agent of Jas. Rushton; that he never saw or knew Mrs. Hannah Rushton, but believes her to have been the widow of James Rushton; that he does not personally know any of the heirs of James Rushton, but has heard of some of them; believes that Anna Rushton was a daughter of James Rushton, but does not know it as a fact. During the time that witness acted as agent of the Ruston- he had no direct communication with any of them, his correspondence being had with and his remittances of money being made to a man in New York who claimed to be the agent of the Rushton heirs. Witness has no recollection of the name of said agent, and has never seen him. The agency of witness' father began in 1832 and continued till his death, which occurred about the year 1870, and that during this period his father had the possession of the said lot as such agent, and collected and transmitted the rents for the same. During his
father's lifetime witness wrote letters and transacted business
13 for him, but has never seen or known personally James Rushton or any of his heirs, and does not know of their existence except from what he has heard.

And the said judge, the said parties having concluded and submitted their testimony and the several matters aforesaid, did then and there give his opinion and deliver his charge to the jury, and,

among other things, did charge the jury as follows, to wit: That the deed of conveyance from Edgeley, as surviving partner of Touns & Edgeley, to James Rushton was sufficient in law to pass the title to said Rushton. To which said opinion and charge of the court the said defendants, by their attorneys, did then and there except.

And the said judge, under the charge and with the directions aforesaid, submitted the said issue and the evidence so given on the said trial to the jury, and the jury aforesaid then and there gave their verdict for said plaintiff, in the words & figures following, to wit:

"We, the jury, find the defendant guilty of the trespass and ejectment as alleged in the declaration, and that the plaintiff is seized in fee of the premises therein mentioned, to wit, that portion of lot one, in block four, in the city of Pensacola, fronting on Palafox and Main streets, beginning at a point of said lot eighty-eight
14 feet and six inches south of the northeast corner of Palafox and Zaragossa streets and running south on Palafox street sixty feet by the depth of said lot west, to wit, forty-one feet and three inches, and that the plaintiff is entitled to recover of the defendants, as the value of mesne profits, the sum of five hundred & eighty-seven $\frac{50}{100}$ dollars ($587.50).

(Signed) M. J. SMALL, *Foreman.*

And the said defendants, by their attorneys, then and there, at the term of the court aforesaid, did enter, in writing, and submit to the said court *his* motion that the said verdict be set aside, and that a new trial be granted, for reasons following, to wit:

First. The court erred in admitting as evidence certified copies of deeds purporting to be from the Spanish archives without requiring the plaintiff to show that the originals could not be obtained, and without first showing that they were not within the party's power, custody, or control.

Second. The court erred in instructing the jury that the sale by a surviving partner was sufficient to convey title without requiring the plaintiff to show that John Edgeley was the surviving partner of Touns & Co.

Third. The verdict rendered herein is contrary to the evidence.

Fourth. The verdict is contrary to law.

15 Fifth. That no agent has authority to appoint an agent to represent his principal without special authority for that purpose, nor has any person the right to assume an agency without express authority or appointment so as to make or operate as an adverse possession against defendants. That no agency was established in this case by plaintiff.

Sixth. That there is no evidence that the pretended deeds offered in evidence by the plaintiff and admitted by the court were or are copies from the archives turned over to the Government of the United States on the cession of the Floridas to said United States by the Spanish Government. (See supplement marked A, page 9.)

Seventh. That there is no evidence that F. E. de la Rua is the

keeper of the Spanish archives, nor that the papers furnished by him and admitted in evidence are from said archives.

And the said motion coming on to be heard on the eleventh day of March, at the term aforesaid, the said court did consider and decide that the said motion should not be granted, to which decision the said defendants, by their attorneys, did then and there except.

Whereupon the court aforesaid, on the eleventh day of
16 March, A. D. 1884, at the term aforesaid, did render judgment in favor of the said plaintiff and against the said defendants, in the words and figures following, to wit:

"It is considered by the court that the plaintiff have and recover from the defendants the possession of the said premises, to wit: That portion of lot one, square four, fronting on Palafox and Main streets, in the city of Pensacola, beginning at a point of said lot eighty-eight feet and six inches south of the northeast corner of Palafox and Zaragossa streets, and running south on Palafox street sixty feet by the depth of said lot west, to wit, forty-one feet and three inches.

"And that the plaintiff have his writ of possession for the same, and that plaintiff have and recover of the said defendants the sum of five hundred and eighty-seven $\frac{50}{100}$ dollars ($587.50), the mesne profits, and costs, and have execution thereof; and the defendants in mercy," &c., as appears of record. And inasmuch as the said several matters objected to or insisted upon and considered by the court do not appear by the record of the verdict and judgment aforesaid, the said defendants, by their counsel aforesaid, did then and there
17 propose this their bill of exceptions to said opinions and decisions of the said judge, and request him to sign the same according to the form of the statute in such case made and provided, which is done this 14th day of March, A. D. 1884.

THOMAS LITTLE, *Judge.* [SEAL.]

18 Supplement A, page 9.

Objection having been made by counsel for plaintiff that the within bill of exceptions does not, but should, contain a copy of a private act of the General Assembly of Florida, approved November 27, 1861, appointing Filo E. de la Rua to the office of keeper of the Spanish archives at the city of Pensacola, and read in evidence on the part of said plaintiff. The said act, as read by the attorney for said plaintiff, is herein below set forth and annexed to the within bill of exceptions and made a part thereof.

"McClellan's Digest Laws of Florida, Chapter VI.

"Sec. 10. Filo E. de la Rua, of the county of Escambia, be, and he is hereby, authorized to hold, exercise, and perform the duties of keeper of the Spanish archives at the city of Pensacola, to which said office he has heretofore been appointed by the Governor and General Assembly of this State. (Sec. 10, chap. 1296, act of Nov. 27, 1861.)

(Endorsed on back:) United States circuit court, fifth judicial circuit, northern district of Florida. Wm. H. Hutchinson, sheriff and

ex-officio administrator, &c., *vs.* George S. Wells, Samuel Myerson *et al.* Bill of exceptions. Filed March 14, 1884. F. C. Humphreys, clerk, by James L. Roche, deputy clerk. Elliott, Tucker, & Thompson, and Simeon Belden, att'ys for defendants.

19 United States Circuit Court, Northern District of Florida.

WM. H. HUTCHINSON, Sheriff & *ex-officio* Administrator of James Rushton, Dec'd,

vs.

GEORGE S. WELLS & S. MYERSON.

And now comes the plaintiff and, as to defendants' pleas filed this day, except as to first plea, interposes his demurrer, and for cause of demurrer says that said pleas are bad in law, and constitute no defense in this case, because the judgment relied upon in said pleas as constituting a bar against plaintiff'- right of action is not between the parties to this suit, and as to said first plea of — between the same parties, plaintiff joins issue.

C. C. YONGE,
E. A. PERRY,
Atty'- [for] Plaintiff.

C. C. Yonge, of att'y for plaintiff, having been duly sworn, says that the foregoing demurrer is not interposed for delay, and that in his opinion said demurrer is well founded in point of law.

C. C. YONGE, SR.

Sworn to & subscribed before me this 8th March, 1884.

[SEAL.] F. C. HUMPHRYS, *Clerk*,
By JAMES L. ROCHE,
Dep'ty Cle'k.

20 (Endorsed on back:) W. H. Hutchinson, sh'ff & *ex-officio* administrator, &c., James Rushton, deceased, *vs.* Wells & Myerson. Demurrer. Filed March 8th, 1884. F. C. Humphreys, clerk, by James L. Roche, deputy clerk. C. C. Yonge & E. A. Perry, att'ys.

21 United States Circuit Court, Fifth Judicial Circuit, Northern District of Florida.

WM. H. HUTCHINSON, Sheriff & *ex-officio* Administrator *de bonis non* of the Estate of James Rushton, Deceased,

vs.

GEORGE S. WELLS and S. MYERSON.

In this cause, leave of the court being first had and obtained, for further plea to the declaration herein filed, these defendants says that the plaintiff ought not to have or maintain his aforesaid action against them, because they say that after committing the acts of trespass in the said declaration mentioned and before commencement of this suit, to wit, on the ninth day of March, 1880, all of said plain-

tiff's rights, title, and pretensions to said lot 1, block 4, in said city of Pensacola, as described in said suit, were fully heard and passed upon and determined adverse to said plaintiff- predecessors and grantors, who, on this said ninth day of March, 1880, defended a suit brought by said defendants, vendors, against George Jolly and W.W. Carr, who claimed under W. W. Carr, administrator of James Rushton and said George Jolly and W. W. Carr, partners, who were
22 then tenants of *of* W. W. Carr, administrator of James Rushton, and who defended their trespass and ejectments by virtue of a claim, or pretended claim, of right and title under pretended claims of said Carr in his capacity as administrator as aforesaid.

And the said Carr & Jolly, tenants as aforesaid, defended by said Carr, administrator as aforesaid, were found guilty of trespass and ejectment by judgment of said U. S. circuit court for the fifth judicial circuit, sitting at Pensacola, Florida, on March ninth, 1880, and upon this the said defendants pray an inspection of the records.

And said Carr and Jolly, tenants aforesaid, defended by Carr, administrator as aforesaid, were evicted and turned out of possession of said premises by virtue of a writ of possession, issued out of this honorable court, based on said judgment as aforesaid.

And these defendants for *fourth* plea say and aver that said judgment so rendered on ninth day of March, 1880, was at the time of commencement of plaintiff's action and is now of full force, virtue, and effect.

Wherefore they plead said judgment in bar of plaintiff's right of action.

And, for further plea, these defendants say that plaintiff, W. H. Hutchinson, who sues as administrator of James Rushton,
23 has no other right, title, claim, or pretension other than such as were fully heard and determined by said judgment of March ninth, 1880, in this honorable court, and said judgment is now and was at the time of the commencement of plaintiff's action in full force, virtue, and effect, and is in nowise altered or changed. Wherefore defendants plead said judgment in bar of plaintiff's right of action.

And these defendants, for further plea, say that they are tenants of Barbara Wells, who they allege and aver has purchased said lot 1, block 4, from the plaintiffs in suit of E. J. Caro, Irene C. Williams, M. C. Duval against George Jolly and W. W. Carr, and who is now the owner of the fee and landlord; and that all the right, title, interest, claims, and pretensions of any administrator of James Rushton were fully heard and determined on said March ninth, 1880, in said court as aforesaid, which said judgment is of full force and virtue. Wherefore they plead said judgment in bar of said plaintiff's right of action.

And the defendants pray the court to dismiss said plaintiff's suit out of court and discharge the defendants from further plea, and judgment be given them for their costs in this behalf expended.

ELLIOTT, TUCKER & THOMPSON,
SIMEON BELDEN,
Att'ys for Defendants.

24 Personally appeared before me Geo. S. Wells, one of the defendants, who being duly sworn, deposes and says said pleas above-written he verily believes to be true.

March 8th, 1884.

F. C. HUMPHREYS, *Clerk*,
By JAMES L. ROCHE, *Deputy Clerk*.

(Endorsed on back:) United States circuit court, fifth judicial circuit, northern district of Florida. W. H. Hutchinson, sheriff, &c., of James Rushton, dece'd, *vs.* Geo. S. Wells & Samuel Myerson. Pleas in bar. Filed March 8, 1884. F. C. Humphreys, clerk, by Jas. L. Roche, deputy clerk. Elliott, Tucker & Thompson and Simeon Belden, att'ys for d'f'd'ts.

25 United States Circuit Court, 5th Circuit, Northern District of Florida. Ejectment.

W. H. HUTCHINSON, Sheriff & *ex-officio* Adm'r, &c.,
vs.
GEO. S. WELLS & S. MYERSON.

Damages $1,200.

And now comes Barbara Wells, who has intervened herein for the purpose of defending her title to the premises in question, and, for plea to the plaintiff's declaration, says that she is not guilty of the premises charged.

ELLIOTT, TUCKER, THOMPSON &
SIMEON BELDEN,
Defendants' Attorneys.

Barbara Wells, being duly sworn, says that the foregoing plea is true.

BARBARA WELLS.

Sworn to before me this 3d day of September, A. D. 1883.
J. H. ESMOND, *J. P.*

(Endorsed on back:) U. S. circuit court, 5th circuit, northern district of Florida. W. H. Hutchinson, sheriff, *vs.* Geo. S. Wells & S. Myerson. Pleas. Filed Sept. 3d, '83. W. W. Wharton, clerk. Elliott, Tucker, Thompson & Simeon Belden, defendants' attorneys.

26 *Title of Cause.*

Pleas in the circuit court of the State of Florida for the first judicial circuit, in and for the county of Escambia, in a certain cause therein, wherein W. H. Hutchinson, sheriff of Escambia county, and as *ex-officio* adm'r of the estate of James Rushton, dec'd, is plaintiff, and George S. Wells and Samuel Myerson are defendants.

Be it remembered that on the 24th day of May, A. D. 1883, came the plaintiff in the case aforesaid by C. C. Yonge, Sr., & E. A. Perry, his attorneys, and filed in the clerk's office of the circuit court aforesaid his *præcipe* for a summons *ad respondandum*, in the words and figures following, to wit:

State of Florida, Escambia Circuit Court. June Rules, 1883.

W. H. HUTCHINSON, Sheriff & *ex-officio* Adm'r of James Rushton, Dec'd,

vs.

GEORGE S. WELLS & SAMUEL MYERSON.

The clerk will issue writ in ejectment—mesne profits, $1,200—as above.

C. C. YONGE & E. A. PERRY,
Att's for Pl'ff.

Description.

27 The southern portion of lot 1, square 4, and its extensions, south side fronting 60 feet on Palafox street by the depth of said lot and extension westwardly 60 feet in the old city of Pensacola, Pintado plan.

Mesne profits claimed of defendants from the first day of January, A. D. 1883, $1,200.00.

Whereupon a summons *ad respondandum* issued from the clerk's office aforesaid, which, with the return and endorsements thereon, is in the words and figures following:

Summons.

THE STATE OF FLORIDA, *Escambia County,* } *ss:*

Circuit Court.

To the sheriff of said county, Greeting:

We command you that you summons George S. Wells and Samuel Myerson to be and appear before the honorable the judge of our circuit court for the county of Escambia, at a court to be holden at the court-house in the city of Pensacola, on the first Monday, being rule day and the 4th day of June next, to answer the complaint of W. H. Hutchinson, sheriff of Escambia county, and as *ex-officio* adm'r of James Rushton, dec'd, in an action of ejectment; damages claimed, $1,200. This you shall in nowise omit, under the penalty of the law, and have you then and there this writ, with your proceedings endorsed thereon.

Witness F. E. de la Rua, clerk of our said court, at the court-house aforesaid, this 24th day of May, A. D. 1883.

[SEAL.] F. E. DE LA RUA,
Clerk Circuit Court.

28 (*Description.*)

The southern part of lot 1, in square 4, and its extensions on south side fronting 60 feet on Palafox street by the depth of said lot and extension westwardly 60 feet, in the old city of Pensacola, according to the Pintado plan.

Mesne profits of said land from the first day of January, A. D. 1883, $1,200.00.

Endorsements on Summons.

W. H. HUTCHINSON, Sheriff of Escambia County, and as *ex-officio* Adm'r of James Rushton, Dec'd,

vs.

GEORGE S. WELLS & SAMUEL MYERSON.

Writ issued May 24, 1883.

Return on Summons.

Executed by serving a copy of the within notice on each of the defendants, George S. Wells and Samuel Myerson, on the 25th day of May, 1883.

J. H. ESMONDE,
J. P. and ex-officio Coroner.

And on the said 24th day of May, A. D. 1883, came the said plaintiff, by his attorneys, and filed his declaration herein in the words and figures following, to wit:

29 *Declaration.*

ESCAMBIA COUNTY COURT, *To wit:*

In the Circuit Court of Florida, Escambia County. June Rules 1883.

W. H. Hutchinson, sheriff of Escambia county and as *ex-off'o* administrator on the estate of James Rushton, dec'd, by his attorneys, C. C. Yonge, Sr., & E. A. Perry, complains of George S. Wells and Samuel Myerson, who have been summoned to answer him in an action of ejectment, for that whereas the defendants are in possession of a tract or parcel of land situate, lying, and being in said county, known and described as follows, to wit: The southern portion of lot one, in square four, in the old city of Pensacola, according to the Pintado plan, and the extension of the said lot on the south side, the said parcel of land fronting on Palafox street sixty feet by the depth of the said lot westwardly sixty feet, containing about one-fourth of an acre, to which said plaintiff, as administrator, claim- title, and the defendants have received the profits of the said land since the first day of January, 1880, of the monthly value of $50, and refuse to deliver possession of the said land to the plaintiff or to pay him the profits thereof.

C. C. YONGE & E. A. PERRY,
Att's for Pl'ff.

Bill of Particulars.

The southern part of lot 1, in square 4, and its extension on south side fronting 60 feet on Palafox street by the depth of said
30 lot and extension westwardly 60 feet, in the old city of Pensacola, according to the Pintado plan. Mense profits of said land from the first day of January, A. D. 1880, $1,200.00.

Appearance.

And afterwards, to wit, on the 4th day of June, A. D. 1883, came the defendants, by their attorneys, and entered herein their appearance.

And at another day, to wit, the 2d day of July, A. D. 1883, the following consent of extension of time to file pleas was filed herein:

Extension of Time to File Pleas.

HUTCHINSON, Sheriff, &c., *vs.* GEORGE S. WELLS *et al.*

In the four ejectment cases brought by Hutchinson, sheriff, &c., *vs.* Wells *et al.*, the time for filing pleas is hereby extended to 10th day of August, 1883, before which time no default will be entered for want of pleas.

July 1st, '83.

E. A. PERRY,
Plff's Att'y.

NOTE BY CLERK.—This is one of four cases of like action brought by plaintiff Hutchinson, and which are respectively as to defendants in the other three cases against Geo. S. Well & John White, George S. Well and Mark Fuller, and George S. Wells and N. Nicholls, but inasmuch as for all four cases only one set of pleas and application for intervention and one petition & bond for removal have been filed, clerk could only and has only transcribed
31 said papers in one of said cases, *i. e.*, in that against Wells & White, and makes this note of the reasons why this record goes up without them.

Certificate.

I, F. E. de la Rua, clerk of the circuit court of the State of Florida, first judicial district, in and for the county of Escambia, do hereby certify that (with foregoing explanatory note by clerk) the foregoing pages, numbered from one to six, inclusive, constitute a true copy of all the proceedings and a correct transcript of the record of the judgment in the *at* caption hereof — above-stated case as appears upon the files and records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this the 2d day of August, A. D. 1883.

F. E. DE LA RUE,
Clerk of the Circuit Court for the County of Escambia.

(Endorsed on back:) W. H. Hutchinson, she'ff & *ex-officio* adm'r *de bonis non* of the estate of James Rushton, dec'd, *vs.* George S. Wells & S. Myerson. Ejectment. Record to U. S. c't court, 5th c't, N. D. Fla. Filed Aug. 24th, 1883. W. W. Wharton, clerk.

32 STATE OF FLORIDA, *Escambia County:*

In the Matter of the Estate of JAMES RUSHTON, Deceased.

Whereas C. C. Yonge and E. A. Perry, attorneys for said estate, have petitioned that W. H. Hutchinson, sheriff of Escambia county, State of Florida, be appointed as administrator *de bonis non* on said estate, and setting forth that W. W. Carr, deceased, late administrator on said estate, had died without completing said administration, and that more than six months had elapsed since the death of said W. W. Carr, late administrator, &c.: Now, therefore, in compliance with said petition, I do hereby appoint W. H. Hutchinson, sheriff of said county, as such administrator *de bonis non*, and he is hereby authorized and directed to take charge of said estate and duly administer on the same according to law.

Given under my hand and seal this 4th day of May, A. D. 1881.

N. C. SHACKELFORD,
County Judge.

STATE OF FLORIDA, *Escambia County:*

I hereby certify the foregoing is a true and correct copy of the original letters of administration granted unto W. H. Hutchinson as the same appears of record and on file in my office.

33 In testimony whereof, witness my hand and seal this 7th day of March, A. D. 1883.

N. C. SHACKELFORD,
County Judge.

NORTHERN DISTRICT OF FLORIDA:

I hereby certify that the foregoing page and a half is a true copy of a certified copy of the letters of administration to W. H. Hutchinson as administrator *de bonis non* of James Rushton, read in evidence in case of W. H. Hutchinson, adm'r, *vs.* Samuel Myerson *et al.*, March term, 1884.

Witness my hand & seal official this 13th day of Mar., A. D. 1884.

[SEAL.] F. C. HUMPHREYS,
Clerk U. S. C't Court.

34 Be it known that I, Benito Caro, an inhabitant of this town, do acknowledge that I sell really and effectively to Gabriel Rivas, of this same vicinity, a house and lot, known by the number 1, containing eighty feet front by one hundred and twenty-one in depth, situated on the principal wharf, which belongs to me, as having purchased it from Joseph Colbert, as will appear by deeds made in this Government on the ninth of August and thirtieth of June, of the years one thousand seven hundred and eighty-seven and one thousand seven hundred and ninety, and I sell him the house and and lot aforesaid, with all the appurtenances to the same belonging, and in the condition they are in, free from encumbrance or mortgage (it not appearing in this Government to have any), for the sum of nine hundred dollars, which I acknowledge to have received cash

in hand to my satisfaction, and grant a formal receipt; wherefore I divest myself of the right of property, possession, useful dominion and ownership to and over said house and lot by me had and held, and release, yield, and transfer it to the purchaser or whomsoever through him claims as true owners thereof, to possess, sell, exchange, or dispose of the same at pleasure by virtue of this deed which I make in his favor in token of real delivery, whereby it is shown that
35 he has acquired possession, without requiring any other proof, with which I invest him in form, and I bind myself to the rection, security, and warranty of this deed in all the form of law, granting hereby as inserted the clause which empowered the justices to cause it to be executed, renouncing the laws, rights, and privileges in my favor with these in general prohibiting the same. And I, the said Gabriel Rivas, being present at the making of this deed, do accept the same, and receive as my purchase the said house and and lot for the sum and on the terms as sold, acknowledging its being placed at my disposal and grant a formal receipt.

In testimony whereof, the present is done in the town of Pensacola, on the twenty-fourth of July, one thousand seven hundred and ninety-seven. I, Don Vincente Folch, and Juan, lieutenant-colonel of infantry, political and military governor of the town aforesaid, and its district and subdelegate of royal finance of the same, with two assistants, witnesses, for want of a clerk, do certify that I know the parties, signed by the seller and a mark by the purchaser, with me and the assistants, witnesses, before John Moreno, Antonio Ferrera, and Carlos Laralle, witness present.

(Signed) BENITO CARO. [SEAL.]

his
GABRIEL de RIVERS. [SEAL.]
mark.

36 Before me—

VINCENTE FOLCH. [SEAL.]
BERGINO G. CALDERON. [L. S.]
MARTIN de la CUERA. [SEAL.]

STATE OF FLORIDA, *Escambia County:*

I, F. E. de la Rua, keeper of the public archives of West Florida, do hereby certify that the foregoing is a true and correct copy of the deed from Benito Caro to Gabriel Rivas, as the same remains of record in my office in Deed Book A, at page 94.

Witness my hand and private seal (my seal official being lost or misplaced) at Pensacola this 22d day of November, A. D. 1883.

F. E. de la RUE, [SEAL.]
Keeper of Public Archives of West Florida.

37 *Translation in the Matter of the Sale of a House Belonging to the Estate of Gabriel de Rivas, Dec'd, Made from the Original Proceedings in said Matter, from Manuscript Archives of West Florida.*

In the city of Pensacola, on the twenty-ninth day of May, eighteen hundred and nine, I, Vincente Folch Y. Juan, colonel of the royal armies, political and military governor of this province

of West Florida, inspector of the veteran troops and militias thereof, vice-lord of the manor, subdelegate, judge [of] the general superintendence of mails for his majesty, &c., say that Fran'o Rivas, of this vicinity, having died over a year ago, leaving minor children and property, without his executrix nor the curator of said minors having presented the inventories nor account of partition. And the tribunal being responsible for such an omission. therefore I order to the assistant witnesses named Domingo Sausa and Anastacio Montes de Oca, who are in charge of public archives and forensic causes, that in continuation of this proceeding they annex copy of the will under which the said Gabriel Rivas died, and add thereafter an authorized copy of the act of his burial. For
38 which purpose they will, having first given the customary participation, apply to the reverend curate and vicar, and will make it known to the executrix and curator that they present within fifteen days the inventory of the property, with a sworn account and statement of the active and passive expenses and debts, so that with full knowledge to proceed to do what may be necessary and is provided.

And this I order and sign with concurrence of Mr. Carlos Hernandez, auditor of war and assessor of this province.

FOLCH.
HERNANDEZ.
DOM'O SAUSA.
ANAST'O MONTO DE OCA.

We, the undersigned, do say that, having been called upon by Gabriel de Rivas, whom we well know, we found him sick and in bed, but apparently in his perfect senses, memory, and natural understanding; that he showed us this package, closed with seven seals with sealing wax on the back, saying to us that it was his testament and last will; that he wanted it should be opened and published after his death, and should be carried out and executed all that he had ordered; that he had made the declaration of faith, ordered about his funeral, named heirs and appointed executors, and
39 asked us to be witnesses of his declaration, and so that it may appear we sign these presents in the city of Pensacola on the 27th February, eighteen hundred and seven.

FRANCISCO GONZALEZ IONTE.
JOSE MARIA MESA.
MANUEL DE LARA.

As witnesses:
ANTONIO MONTERO.
PABLO GRANPERA.
RAMON SANTIAGO.
FELISSE PRITO.

Translator's Note.

Here follows copy of the will, and for which translator refers, and where it appears to certified copy already furnished by him in the

matter of the 300 arpents of land, and in *extenso* thereto, also follows the usual proceedings had in opening of the will, &c.

And there as follows:

Mr. Governor:

Maria Moreno, with the attention that is due your excellency, presents herself and says that the condition of scarcity, or better said poverty, in which she is caused by the much sickness and expenses that she has had to incur during her widowhood compel her, so as to be enabled to maintain herself, to avail herself of the rare proposition that is made her to buy her house; but, having gone to the public office to execute the proper title, and she having been informed that it could not be done because of interdiction, she
40 applies to the justice of your excellency, praying that she be not prevented from doing it as well so as to not lose the favorable opportunity which she has of disposing of it so advantageously as for the ruinous condition in which the said house is now, and as being the only means that remains to support herself and family. It is grace that she will receive from the justice of your excellency.

Pensacola, August 11, 1817.

MA. MORENO.

Pensacola date as aforesaid.

Let Mr. Eugenio Sierra inform concerning this petition.

MASOT.

Mr. Govenor:

In compliance with the preceding decree I inform your excellency as follows:

That at the death of Gabriel Rivas, husband of the petitioner, the only property there was were two houses, of which the widow sold one with the permission (if I recollect rightly) of the tribunal, and without intervention of valuation of said house, nor less having made division of the amount so as to secure the share of six minors, who are yet uncovered, and notwithstanding that I, as testamantery executor, solicited from the widow to verify this matter, there
41 were always some difficulties on her part that prevented it. But a purchaser having offered for the house, which is greatly detori-ated, and said offer being more than common, owing to the times, and said house being exposed to fire, it appears to me proper she be permitted the sale thereof with as little delay as possible, so that the purchaser may not draw back.

And as to what appertains to secure to the minors their shares, and to proceed through the forms of right, the wise decree of your excellency will determine what may be his pleasure.

Pensacola, August 11th, 1817.

EUGENIO ANTO. SIERRA.

PENSACOLA, *August* 11, 1817.

Pass to the auditor of war and asses-or general.

MASOT.

of West Florida, inspector of the veteran troops and militias thereof, vice-lord of the manor, subdelegate, judge [of] the general superintendence of mails for his majesty, &c., say that Fran'o Rivas, of this vicinity, having died over a year ago, leaving minor children and property, without his executrix nor the curator of said minors having presented the inventories nor account of partition. And the tribunal being responsible for such an omission, therefore I order to the assistant witnesses named Domingo Sausa and Anastacio Montes de Oca, who are in charge of public archives and forensic causes, that in continuation of this proceeding they annex copy of the will under which the said Gabriel Rivas died, and add thereafter an authorized copy of the act of his burial. For
38 which purpose they will, having first given the customary participation, apply to the reverend curate and vicar, and will make it known to the executrix and curator that they present within fifteen days the inventory of the property, with a sworn account and statement of the active and passive expenses and debts, so that with full knowledge to proceed to do what may be necessary and is provided.

And this I order and sign with concurrence of Mr. Carlos Hernandez, auditor of war and assessor of this province.

FOLCH.
HERNANDEZ.
DOM'O SAUSA.
ANAST'O MONTO DE OCA.

We, the undersigned, do say that, having been called upon by Gabriel de Rivas, whom we well know, we found him sick and in bed, but apparently in his perfect senses, memory, and natural understanding; that he showed us this package, closed with seven seals with sealing wax on the back, saying to us that it was his testament and last will; that he wanted it should be opened and published after his death, and should be carried out and executed all that he had ordered; that he had made the declaration of faith, ordered about his funeral, named heirs and appointed executors, and
39 asked us to be witnesses of his declaration, and so that it may appear we sign these presents in the city of Pensacola on the 27th February, eighteen hundred and seven.

FRANCISCO GONZALEZ IONTE.
JOSE MARIA MESA.
MANUEL DE LARA.

As witnesses:
ANTONIO MONTERO.
PABLO GRANPERA.
RAMON SANTIAGO.
FELISSE PRITO.

Translator's Note.

Here follows copy of the will, and for which translator refers, and where it appears to certified copy already furnished by him in the

matter of the 300 arpents of land, and in *extenso* thereto, also follows the usual proceedings had in opening of the will, &c.

And there as follows:

Mr. Governor:

Maria Moreno, with the attention that is due your excellency, presents herself and says that the condition of scarcity, or better said poverty, in which she is caused by the much sickness and expenses that she has had to incur during her widowhood compel her, so as to be enabled to maintain herself, to avail herself of the rare proposition that is made her to buy her house; but, having gone to the public office to execute the proper title, and she having been informed that it could not be done because of interdiction, she
40 applies to the justice of your excellency, praying that she be not prevented from doing it as well so as to not lose the favorable opportunity which she has of disposing of it so advantageously as for the ruinous condition in which the said house is now, and as being the only means that remains to support herself and family. It is grace that she will receive from the justice of your excellency.

Pensacola, August 11, 1817.

MA. MORENO.

Pensacola date as aforesaid.

Let Mr. Eugenio Sierra inform concerning this petition.

MASOT.

Mr. Govenor:

In compliance with the preceding decree I inform your excellency as follows:

That at the death of Gabriel Rivas, husband of the petitioner, the only property there was were two houses, of which the widow sold one with the permission (if I recollect rightly) of the tribunal, and without intervention of valuation of said house, nor less having made division of the amount so as to secure the share of six minors, who are yet uncovered, and notwithstanding that I, as testamantery executor, solicited from the widow to verify this matter, there
41 were always some difficulties on her part that prevented it.

But a purchaser having offered for the house, which is greatly detori-ated, and said offer being more than common, owing to the times, and said house being exposed to fire, it appears to me proper she be permitted the sale thereof with as little delay as possible, so that the purchaser may not draw back.

And as to what appertains to secure to the minors their shares, and to proceed through the forms of right, the wise decree of your excellency will determine what may be his pleasure.

Pensacola, August 11th, 1817.

EUGENIO ANTO. SIERRA.

PENSACOLA, *August* 11, 1817.

Pass to the auditor of war and asses-or general.

MASOT.

PENSACOLA, *August* 12, 1817.

SEN'R: All that is stated in the foregoing information by the curator *ad litem* of the minor heirs of Gabriel de Rivas being apparent and the ru*nious* of the house being visible and notorious, the sale thereof that is asked is permitted, provided always that the heirs agree thereto, all signing the deed themselves or by
42 their respectives heirs and tutors of the grandchildren, and that the proceeds be retained in the secretaryship until the judgment of inventory asses-ment and account of partition is settled. Asses. p. 2.

HERNANDEZ.
JOSE CERALLOS.
MASOT.
DOM'O SAUSA.

On the same day we made it known to Mrs. Maria Moreno.
In faith whereof.

CERALLOS.
SAUSA.

Immediately thereafter we did so to Mr. Eugenio Ant. Sierra.
In faith whereof.

CERALLOS.
SAUSA.

At the same doing we made it known to Ramon Villatta, Mr. Jose Caro, and Mr. Fernando Moreno, as fathers and husbands of the heirs.
In faith whereof.

CERALLOS.
SAUSA.

Mr. Governor and sub-del*a*gate of the Royal Exchequer.

By virtue of the judgment of date the 11th instant, by which the auditor of war was pleased to decree in the matter of my being permitted to sell my house by depositing the proceeds of the sale thereof until is cleared up the estate of my deceased husband, Gabriel
43 de Rivas, I, deeming it very proper to your excellency, pray to order, if he so deems it proper, that out of the one thousand two hundred dollars that I am to get in cash there be given me two hundred dollars, so that meanwhile I may pay the rent of the house I live in, as also for my sustenance and that of my children, I being in extreme want, and so as to purchase clothes to dress both myself and my children with, we being in a state of nudity, for it is publicly known that for more than six months I am maintained through charity; and that the balance of the money I deposit with McJose Tapiola while I present the account of the estate to the tribunal. Grace that I expect from the goodness and benignity of your excellency.

Pensacola, August 12, 1817.

MA. MORENO.

PENSACOLA, *August* 12, 1817.

Although the money is not yet deposited let the prayer of the petitioner go before the auditor of war, so that he may decree concerning thereto.

MASOT.

Mr. GOVERNOR: There may be given the two hundred dollars, provided agree thereto the heirs that are of age and the curator
44 *ad-litem* of the minors, to whom it will be made known, so that by signed answer they explain their consent.

And there is no objection that the amount be placed in possession of Mr. Josef Tapiola prior to such consent.

Pensacola, August 13, 1817.

CARLOS HERNANDEZ.

PENSACOLA (of date as above).

In conformity with what the auditor of war says.

MASOT.
CERALLOS.
SAUSA.

On the same day we made it known to Mrs. Maria Moreno.

In faith whereof.

CERALLOS.
SAUSA.

On the same day, and after having been summoned, appeared in this office Mr. Eugenio Sierra, Mr. Ramon Villalta, Mr. Fernando Moreno, and Mr. Jose Caro, the first as curator, and the others as husbands of the heirs, their wives, and Gabriel de Rivas as heir on his part to said estate, and being informed of the foregoing proceedings they all unanimously said that they consented that there be given to the widow the two hundred dollars, and that the balance be deposited as provided.

And whereas in the same act Mr. Jose Tapiola has declined the trust, they were also agreed that it remain in the secretaryship,
45 as it was before ordered, and they signed, to which we certify.

FERNANDO MORENO,
For my Nine Children.
RAMON VILLALTE,
As Father of my Minor Children.
JOSE ESTERAU CARO,
For my Wife, Paula Rivas.
GABRIEL RIVAS.

In the same act, after having received from the purchaser, Mr. Edward Tuens, the one thousand two hundred dollars which he has paid in cash, as per deed which of this date has been executed in the second book *cuaderro* of public instruments for this year at page 45, were counted and enumerated the two hundred dollars that were ordered to be given by proceedings of this date, with the consent of the heirs that are of age, to the widow, Mrs. Maria Moreno, which

amounts she acknowledges to receive at her will, and in witness whereof she signs with his lordship, of which we, the assistant witnesses, give faith and certify.

MA. MORENO.
DOMINGO SAUSA.
JOSE CERALLOS.

STATE OF FLORIDA, *Escambia, Florida:*

I certify to have made the translation that is contained in the foregoing eight and one-third pages from the Spanish manu-
46 script archives of West Florida; that said translation is correct, and that it is made from the Spanish original proceedings in my charge.

In witness whereof I sign and seal these presents with my private seal (the official seal being lost or misplaced) this 1st day of August, A. D. 1874.

F. E. DE LA RUA. [SEAL.]
In charge Spanish Archives of West Florida.

47 In the name of the Almighty God, who exists without beginni-g and who reigns without end, amen.

Know all whom this testament and last will shall see that Gabriel de Rivas, a citizen of this place, native of the city of Seville, legitimate son of Antonio & Flora del Corro, natives and citizens of said city, and whom I do not know if they are alive, not having heard from them for several years; being sick in bed, with all my senses, memory, and natural understanding, such as God our Master has been pleased to grant me, believing, as I firmly believe, in the high and supreme mystery of the Holy Trinity—Father, Son, and Holy Ghost, three persons really distinct, but making but one—and in the incarnation of the Holy Verb made man for our salvation, in which faith and belief I have lived and intend to live until death; fearing death and its uncertain hour, as is natural to all; knowing that my time must come, I want to make my will, and, for better guidance, I call as my advocate upon the Sovereign Queen of the Angels, Holy Mary, Mother of God, and our Lady, and pray to her that she intercede for me with her precious Son, that he may pardon me the gravity of my sins and put my soul in a way to salva-
tion, with which petition and divine intercession I ordain it
48 as follows, to wit:

First. I recommend my soul to the same God and Master who created it and redeemed it with and at the price and infinite value of his precious blood, passion, and death.

My body I give to the earth of which it was framed, and that burial be given me in the graveyard of the faithful in that manner and form that my executor may order, at whose pleasure I leave the balance of my funeral, such being my will. Also I order that there be said the three masses for the soul for the repose of mine, and that there be given as charity for once two bits to each one of the freed mandates, and by which I withdraw them from my property, as being such my will.

Also I declare to be married according to the rites of our Holy Church, Catholic & Apostolic and Roman, by which marriage with Maria Moreno I have had seven children, named Antonio, Maria, Josefa Paula, Juana, Gabriel, Agueda, and Leonardo Rivas, and I declare it that it may appear.

Also I declare as my property a house in which I live with my family, an adjoining house actually occupied by Pablo Granpusa, and three hundred arpen-s of land situated outside of this place.

Also I declare that there is due me several sums of money
49 as well by the king or his royal exchequer as by different individuals, and which I request my executors to collect, and to that effect to do whatever may be necessary. Also I declare to owe to several persons distinct amounts which appear from my obligations or receipts, and ask my executor to pay them so soon as is collected what is due me, having a perfect knowledge thereof from the fact of having signed for me. Also I name as curator *ad litem* for my minor children Mr. Eugnio Sierra, chief practitioner of the royal hospital, at this place, which I so declare as being my will.

Also I name as my executor and holder of property my beloved wife, Maria Moreno, relieving her from all bond, so that by herself and without intervention of law she proceed to carry out in all its parts this my last will.

Also I declare, institute, and name as my only and universal heirs my above referred children to all the property that may be belonging to me after satisfying my debts and the six hundred dollars of the dower of my referred wife, so that, with the blessing — God and of mine, they possess and inherit them by equal parts, such being my will.

Also I declare that of the six hundred dollars that I am re-
50 sponsible for the dower of my wife, she has received three hundred and fifty dollars in a negro named Franc or Francisco, that it may appear. And I revoke and annul, and give as well, and cancel*led* whatever other wills or codicils which before this one I may have made in writing or verbally, and which I want to have no effect nor validity in law nor out of law, saving and excepting this one, which I now execute in that manner and form as to right may be best.

In testimony of which this will and testament is dated in the city of Pensacola, on the twenty-seventh of (September) February, eighteen hundred and seven. Being witnesses, Mr. Matio Ceriera, ensign of the regiment of Louisiana; Mr. Jose Garcia Capitillo, Mr. Benardo Molina, signing at my request; Mr. Jose Maria de la Pera, at request of Gabriel de Rivas for not knowing how to sign Jose Ma. de la Pera; Matias Cervera, Bernado Molino, Jose Garcia Capitillo.

It is in conformity with the original will which remains filed in the corresponding book, and by virtue of an order this was taken so as to append to the proceedings of the estate of said Gabriel Rivas, deceased. Pensacola, seventh October, one thousand eight hundred and seventeen. Dollars. Erased, not to be used.

DOMINGO SAUSA.

51 STATE OF FLORIDA, *Escambia County:*

I, F. E. de la Rua, in charge of the Spanish archives of West Florida, do hereby certify that the foregoing is a correct translation from the Spanish into English from original manuscript proceedings now in said archives in the matter of the sale of land of the estate of Gabriel de Rivas, deceased.

Given under my hand and private seal, the official seal being lost or misplaced, this 29th day of July, A. D. 1874.

F. E. DE LA RUA, [SEAL.]
In Charge of Spanish Archives of West Florida.

52 Be it known that I, Maria Moreno, widow of Gabriel Rivas, testamentary executrix and guardian of my minor children, do grant by these presents that I sell really and in fact to Edward Touns & Co. a house constructed upon a quarter of lot known by the number one, containing forty feet front on the bay, by the actual depth, at present situated at the corner of the said bay and square of Ferdinand Seventh, bounded on one side by house and lot belonging to Augustin Valverde, and on the west by another of Francis Bond, it being the same which I obtained of my deceased husband; and in view of the authority conferred upon me by decree of this tribunal, bearing date twelfth instant, I sell the said house and quarter of lot to the aforementioned Edward Touns & Co., free from incumbrance or mortgage, none appearing in the records of this office, for and in consideration of the sum of one thousand and five hundred dollars, to be paid in the manner following: One thousand and two hundred dollars cash, the receipt whereof is hereby acknowledged, and three hundred payable in one year from the date of these presents, the said house and quarter of lot remaining subject for the payment of the said sum of money until the whole be paid, by means of which I relinquish and seperate myself of the right
53 of property, possession, and interest, claim, and demand which over the said house and quarter of lot I had and held as heir and guardian of my said children; and I do hereby cede, renounce, and transfer the same unto the purchasers, their heirs, executors, and assigns, so that as true owners thereof they may enjoy, possess, sell, exchange, or dispose of the said premises at their will, in virtue of this deed which I execute in their favor, in token of real delivery, whereby it is shown that they have acquired possession of the above-granted premises without the necessity of any further proof, with which I relieve them, and I bind myself to the eviction, security, and warranty of this sale in due form of law, with my property, present and to have, granting hereby, as inserted, the clause of guarantee which empowered the justice to cause it to be executed, in order to compel me to its fulfillment. And I, Edward Touns & Co., being present at the making of this deed, do accept the same in my favor, receiving therefrom the said house and quarter lot as purchased for the sum and agreeably as sold, acknowledging the same to be placed at my disposal, and in evidence thereof I give a receipt and discharge in full.

In testimony whereof the present is done at the city of Pen-
54 sacola on the thirteenth day of August, one thousand eight hundred and seventeen.

I, Don Joseph Masot, colonel of the royal corps of artillery political and military governor of the province of West Florida, do hereby certify that I know the parties who have this acknowledged and signed the foregoing, being instrumental witnesses, Antonio Molina, Miguel Betancourt, and Eugenio Couridez, and of assisting witnesses for want of an escribando, Domingo Sausa and Joseph Cerallos, who hereunto sign with me.

MARY MORENO.
EDWARD TOUNS & CO.,
For my Wife, Paula Rivas.
JOSEPH E. CARO.
As Father of my Minor Children.
RAMON VILLALTA.
GABRIEL RIVAS,
For my Wife, Agueda Rivas.
FERNANDO MORENO.
EUGENIO ANTONIO SIERRA.

Before me—

JOSEPH MASOT.

DOMINGO SAUSA.
JOSEPH CERALLOS.

NOTE.—There is an acknowledgment, made and signed by Mary Moreno, declaring to have received the said sum of three hundred dollars as mentioned in the preceding deed of conveyance, and, further, that the premises pledged are free from all responsibility and in perfect use by virtue of the payment thereof.

Done at the city of Pensacola on the 13th day of August, 1818.

(Signed) WIDOW RIVAS.

Witness:
JOS. E. CARO. [SEAL.]

STATE OF FLORIDA, *Escambia County:*

55 I, F. E. de la Rua, keeper of the public archives of West Florida, do hereby certify that the foregoing is a true and correct copy of the deed from Maria Moreno, Widow Rivas, ex'x, &c., to Edward Touns & Co. as the same remains of record in my office, in deed book R, at page 62 to 63.

Witness my hand and private seal (my official seal being lost or misplaced) this 22d day of November, A. D. 1882, at Pensacola.

F. E. DE LA RUA, [SEAL.]
Keeper of Public Archives of West Florida.

56 *Extract from 4th Vol. American State Papers, p. 110, Edited by Walter Laine, Secretary of the Senate, Containing Proceedings of Commissioners for Settling Land Claims.*

ABSTRACT E.

"Abstract of claims to lots in Pensacola, founded upon mesne conveyances passed before the gove-nor, alcalde, or notary, which purport to have been made gratuitously by the Spanish and British Governments, and which have been confirmed by the undersigned commissioners."

No.	By whom claimed.	Original grantee.	Nature of claim.	Date.	No.	Dimension of lot.	Before whom passed.	Built on and enclosed.
4	John Edgeley	Maria Revas	Mesne conveyance.	July, 1717	1	40 ft. by 120.	Gov. Folch...	1781 to 1823

All of which is respectfully submitted.

(Signed) SAMUEL OVERTON.
JOSEPH M. WHITE.
CRAVEN P. LUCKEY.

NORTHERN DISTRICT OF FLORIDA, *City of Pensacola:*

I, F. C. Humphreys, do hereby certify that the foregoing is a true copy from 4th vol., American State Papers, p. 110, which was read in evidence on the trial of the case of W. H. Hutchinson,
57 adm'r *de bonis non* of James Rushton *vs.* E. J. Caro, Geo. S. Wells, Samuel Myerson *et al.*, action of ejectment tried at March term of circuit court of the United States, northern district of Florida, A. D. 1884.

Witness my hand and seal official this 13 day of Mar., A. D. 1884.

F. C. HUMPHREYS,
Clerk U. S. C't Court.

58 PENSACOLA, PROVINCE OF WEST FLORIDA,
This 16 *of August*, 1817.

This indenture, made by and between Paula R. Caro and Touns & Co., witnesseth: That the said Paula R. Caro do- hereby lease to the said Touns & Co. a certain piece of land and house lying and being in Pennsacola, province of West Florida, situated upon and fronting seventy-four feet front on Palafox street by eighty feet in depth, and known as lot No. 1, to hold the same for the term of two years from the date first above-mention-, and the said Touns & Co. yielding and paying rent therefore the sum of one hundred and fifty dollars lawful money of the province of West Florida land, the first payment to be in advance for first year, and second year to be paid quarterly; and the said Touns & Co., for his executors or assigns, does hereby covenant to & with said Paulo R. Caro,

her heirs and assigns, that said Touns & Co. will well and truly pay said rent, and in default of said payment Paulo R. Caro shall enter upon and take possession of said property without hindrance, & all others holding from the said Touns & Co. shall be subject to the within agreement.

Witness whereof we here set our hands and seals this 16th day of August, 1817, in presence of witness above written.

PAULO R. CARO his x mark. [SEAL.]

ED. TOUNS & CO. [SEAL.]

Witness:

WY MICHALET. [SEAL.]

D. DUVAL. [SEAL.]

59 I do hereby certify the foregoing to be a true and correct copy of the original, with the original signatures of the party within interested.

JOSEPH E. CARO.

(Endorsed on back.)

Copy of Lease of Touns & Co. by Paulo R. Caro.

Received for August 16th, 1817, to August 16th, 1818, of Touns & Co. the sum of $150.

JOSEPH E. CARO.

Received of Touns & Co., from August 16th, 1818, to November 16, 1818, the sum of $37.50.

JOSEPH E. CARO.

Received of Touns & Co., for Feb'y 16th, 1819, the sum of $37.50.

JOSEPH E. CARO.

Received of Juan Genison, in favor of Touns & Co., for May 16th, 1819, the sum of $37.50.

JOSEPH E. CARO.

Received of Touns & Co., for May 16, 1819, to August 16, 1819, for one note, the sum of $37.50.

JOSEPH E. CARO.

60 Filed March 14, '78.

ED. P. BROOKS, *Clerk*,
By G. E. WENTWORTH,
Deputy Clerk.

Filed March 10, 1884.

F. C. HUMPHREYS,
By JAS. L. ROCHE,
Deputy Clerk.

61 PENSACOLA, *July 14th*, 1817.

According to the wishes of my husband, Gabriel de Rivas, not to sell the property known as lot No. 1 before his death, which lot contains 74 feet front & 80 feet in depth, in conformity with his wishes before his death, except between persons in the family, which also the three hundred arpants of land granted to my husband by the Spanish Government, but for the land known as No. 1, which for the sum of one hundred dollars, which I received from my daughter, Paula, and for the love which I pos-ess, I make a donation of said land, which my deceased husband, Gabriel de Rivas, bought from Benito Caro in July, in the year one thousand seven hundred and ninety-seven. After my death my wishes are that of the three hundred arpants of land above mentioned, donated to my husband in the year one thousand eight hundred aud six, be divided between my children, Paula, Agueda, Gabriel, Leouardo, and my niece, Caudi Rierra, leaving as my agent Joseph E. Caro, to arrange all my business, he having no power to sell any of the above-mentioned property, so that all may — after my death, as I have expressed in the above. I sign in Pensacola the 14th day of July, 1817.

MARIA RIVAS.

Witn-ss-:
JOSE CERALLOS.
DON NICHOLAS LOPEZ.
RAMON SIALTO.

62 I, Don Jose Masot, col. of the royal corps of artillery and civil and military governor of the province of East Florida, certify to know the persons whom have signed this at the back.

MASOT.

Witness-:
PREDO REGGIOL.
BENITO LOPEZ.

(Endorsed on back:) Filed in my office. Joseph E. Caro. Filed March 14th, 1878. Ed. P. Brooks, clerk, by G. E. Wentworth, deputy clerk. Filed March 10th, 1884. F. C. Humphreys, clerk, by James S. Roche, deputy clerk.

63 This indenture, made this — day of November, A. D. 1823, between John Edgeley and John Simpson and James Rushton, Jr., of the other part, all of the city of Pensacola, witnesseth: That for and in consideration of the sum of three thousand five hundred dollars, lawful money of the United States, in hand paid, the receipt whereof is hereby acknowledged, the said Edgeley, in his own right and as surviving partner of the late firm of Touns & Edgeley, and John Simpson have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said James Rushton a part of a certain lot of ground in the city of Pensacola, known and designated in the plan of the said city as No. 1, and situated at the corner of Palafox street, to wit, forty feet front on the bay, and running back to that part of the same lot purchased by John Jenison, together with all and singular the appurtenances to

the said piece or parcel of land or ground belonging, or in any way belonging; to have and to hold the said piece or parcel of ground to the said James Rushton, his heirs, executors, or administrators and assigns, the said John Edgely individually warrant against the claim or claims of all and every person or persons whatsoever.

64 In testimony whereof the said John Edgeley and John Simpson have set their hands and affixed their seals the day, month, and year aforesaid.

JOHN EDGELEY. [SEAL.]
JOHN SIMPSON. [SEAL.]

Signed, sealed, & delivered in the presence of—
JOS. M. WHITE.
JAS. FINLAY.

STATE OF FLORIDA, *Escambia County:*

Before me, John Miller, clerk of the court for the county aforesaid, personally appeared John Edgeley and John Simpson and acknowledged the foregoing instrument to be their act and deed, and desired that the same might be recorded as such.

Acknowledged before me 15th November, 1823.

JOHN MILLER, *Clerk.*

STATE OF FLORIDA, *Escambia County:*

I, F. E. de la Rua, clerk of the circuit court in and for the county and State aforesaid, do hereby certify that the foregoing is a true and correct copy of the deed from John Edgeley and John Simpson to James Rushton as the same remain of record in my office in deed book A, at page 127 to 128.

In witness whereof I hereunto set my hand and seal of-
65 ficial, at Pensacola, this 22d day of November, A. D. 1882.

F. E. DE LA RUA,
Clerk C't Court, Escambia Co'ty, Fla.

NORTHERN DISTRICT OF FLORIDA:

I do hereby certify the foregoing 29 pages contain a true copy of a certified copy of translation of Spanish archives, copy of letters of administration, and proceedings of land commissioners read in evidence in the case of W. H. Hutchinson, adm'r *de bonis non, vs.* E. J. Caro, Geo. S. Wells, S. Myerson, N. Nicholls, *et al.*, action of ejectment, tried at March term of U. S. circuit court for northern district of Florida, at Pensacola, A. D. 1884.

Given under my hand and seal of office this 13 day of March, A. D. 1884.

[SEAL.] F. C. HUMPHREYS,
Clerk U. S. C't Court.

66 MARCH 13, 1884.

Mess. E. A. Perry & C. C. Yonge.

GENT-: You will please take notice that we will proceed at once in the clerk's office to take affidavits of B. C. Willis, Francis Walsh, & J. P.

Schad to establish the value of the property involved in the suits of W. H. Hutchinson, sheriff, &c., *vs.* Geo. S. Wells *et al.*, Sam'l Myerson *et al.*

Very respectfully,

ELLIOTT, TUCKER & THOMPSON &
SIMEON BELDEN, *Atty's for Defendants.*

Served the above on E. A. Perry, Esq., one of the attorneys of record for plaintiff cases, 11, 62, 63, 64, 65, 66.

Filed March 13th, 1884.

F. C. HUMPHREYS, *Clerk,*
By JAMES L. ROCHE,
Deputy Clerk.

67 United States Circuit Court, 5th Circuit, Northern Dist. of Fla. Ejectment.

W. H. HUTCHINSON, Sheriff, &c., *vs.* GEO. S. WELLS *et al.*

This day personally appeared before me B. C. Willis, who, being duly sworn, say- that he is acquainted with the property involved herein, to wit, the property described in judgement in this suit, and the same is reasonably worth more than five thousand dollars.

B. C. WILLIS.

F. C. HUMPHREYS, *Clerk,*
[SEAL.] By JAS. L. ROCHE,
Deputy Clerk.

(Endorsed:) Filed March 13, 1884. F. C. Humphreys, clerk, by Jas. L. Roche, deputy clerk.

United States Circuit Court, 5th Circuit, Northern District of Florida. Ejectment.

W. H. HUTCHINSON, Sheriff, &c., *vs.* GEO. S. WELLS *et al.*

This day personally appeared Francis Walsh, who, being
68 duly sworn, says that he is acquainted with the property involved herein, to wit, the property described in judgment of this suit, & that the same is reasonably worth more than five thousand dollars.

FRANCIS WALSH.

F. C. HUMPHREYS, *Clerk,*
[SEAL.] By JAS. L. ROCHE,
Deputy Clerk.

(Indorsed:) Filed March 13, 1884. F. C. Humphreys, clerk, by Jas. L. Roche, deputy clerk.

69 Supreme Court of the United States.

GEO. S. WELLS, BARBARA WELLS, SAMUEL MYERSON, M. C. DUVAL, and IRENE C. WILLIAMS, Appellants,

vs.

W. H. HUTCHINSON, Sheriff, &c., Appellee.

Know all men by these presents that we, Geo. S. Wells, Barbara

Wells (intervenors), Samuel Myerson, and E. J. Caro, M. C. Duval and Irene C. Williams (intervenors and warrantors), as principals, and Chas. Ahrens, E. Levy, James Wilkins, J. C. Pettersen, J. Cosgrose, and Henry Horsler, as sureties, are held and firmly bound unto W. H. Hutchinson, sheriff and *ex-officio* administrator *de bonis non* of the estate of James Rushton in the sum of fifteen hundred dollars, to be paid to said W. H. Hutchinson, his executors or administrators; to which payment whereof, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated this — day of March, A. D. 1884. Whereas the above bounden Geo. S. Wells, Barbara Wells, Samuel Myerson, E. J. Caro, M. C. Duval, and Irene C. Williams have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the fifth judicial circuit for the northern district of Florida: Now, therefore, the condition of this
70 obligation is such that if the above-bounden George S. Wells, Barbara Wells, Samuel Myerson, E. J. Caro, M. C. Duval, and Irene C. Williams shall prosecute their writ of error to effect, and shall answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

H. HORSLER. [SEAL.]
J. C. PETTERSON. [SEAL.]
J. COSGROVE. [SEAL.]
CHAS. AHRENS. [SEAL.]
JAS. WILKINS. [SEAL.]
E. LEVY. [SEAL.]
M. C. DUVAL, C. J. CARO, AND I. C. WILLIAMS, [SEAL.]
Pr. ELLIOTT, TUKER & THOMPSON,
Atty's-in-fact.

Sealed and delivered in presence of—
J. D. THOMPSON.
WM. FISHER.

This day appeared before me Geo. S. Wells, for himself, and Barbara Wells, his wife, who, being duly sworn, say that they are sureties in the foregoing bond, and that they are each worth the sum of fifteen hundred dollars over and above all legal debts, liabilities, and exemptions.

H. HORSLER.
J. C. PETTERSEN.
J. COSGROVE.
CHAS. AHRENS.
JAS. WILKINS.
E. LEVY.

March 14, 1884.

F. C. HUMPHREYS, *Clerk.*
By JAS. L. ROCHE, *Deputy Clerk.*

71 The above bond is hereby approved.
March 14, 1884.

THOMAS SETTLE, *Judge.*

(Endorsed on back:) Filed Mar. 14, 1884. F. C. Humphreys, clerk, by Jas. L. Roche, dep'ty clerk.

72 I, F. C. Humphreys, clerk U. S. circuit court, fifth judicial circuit, northern district of Florida, do hereby certify that the foregoing 81 pages constitute a true copy of all the proceedings and a correct copy of transcript of the record in the case of W. H. Hutchinson, sheriff & *ex-officio* adm'r *de bonis non* of the estate of James Rushton, deceased, *vs.* George S. Wells *et al.*, Otto Goldstuker *et al.*, as appears upon the files and records of my office.

In testimony whereof I have hereunto set my hand & seal official this 19th day of July, A. D. 1884.

[Seal U. S. Circuit Court, 5th Circuit, Northern District of Florida.]

F. C. HUMPHREYS,
Clerk U. S. Circuit Court.

"NOTE BY CLERK."—The order from Hon. Thomas Settle, judge, permitting the substitution of certified copies for certified copies of originals was as follows:

"JACKSONVILLE, FLA., *May* 7, '84.

"Col. C. C. Yonge.

73 "DEAR SIR: I have signed the orders you enclosed to me, & herewith return the same. The orders were made from the bench at Pensacola, and I therefore prefer that they should bear date of the last day of the term. I hereby authorize you to affix that date; there is no need of an order '*nunc pro tunc*,' for this is simply reducing to writing what was actually done during term time.

"Very truly yours,

"THOMAS SETTLE."

Order.

Circuit Court United States for Northern District of Florida, at Pensacola, 1884.

W. H. HUTCHINSON, Sheriff, & *ex-officio* Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,
vs.
GEO. S. WELLS *et al.*, OTTO GOLDSTUKER *et al.*
} Ejectment.

It is ordered that certified copies of Spanish archives and other documentary evidences be filed in lieu of the copies read in
74 evidence on the trial of this case at March term, 1884, and plaintiff have leave to withdraw the originals.

THOMAS SETTLE, *Judge.*

75 W. H. HUTCHINSON, Sheriff & *ex-officio* Adm'r *de bonis non* of the Estate of James Rushton, Deceased, *vs.* OTTO GOLDSTUKER, E. J. CARO, MATIEVA C. DUVAL, and IRENE C. WILLIAMS. } Ejectment.

And now at this day came the parties, by their respective attorneys. and issue being joined upon the plea of not guilty, filed the 15th of August, 1881, and upon the plea of statute of limitation, and thereupon came a jury to wit:

Arthur Duncan, D. D. Shuttleworth, M. C. Gonzalez, Henry Captain, C. F. Quina, John Kohler, Lt. C. Cobb, Jas. E. Creary, M. J. Sarell, J. L. Powell, Jordan Brown, & Matthew Sturdivent, who, being duly tried, empannelled & sworn, and having heard the evidence, the argument of counsel, & the charge of the court, retired to consult of their verdict and returned into court the following verdict, to wit:

We, the jury, find the defendants guilty of the trespass & ejectment as alleged, and that the plaintiff is seized in fee of the said premises, to wit, that portion of lot one, square four, in the city of Pensacola, beginning at a point on east line of said lot, seventy-two feet south of the corner of said lot on Saragossa and Palafox street-, thence west forty-one feet & three inches to Palafox street, thence north eighteen feet to the beginning.

March 11th, 1884.

(Signed) M. J. SARELL, *Foreman.*

76 It is therefore considered by the court, the plaintiff waiving any claim to mense profits, that the plaintiff do have & recover the possession of said premises and that he have his writ of possession therefor, and that he have execution for costs.

77 I, F. C. Humphreys, clerk of the circuit court of the United States, 5th judicial circuit, northern district of Florida, do hereby certify that the foregoing is a true and correct transcript of the judgment of and opinion of court in the above-stated cause as the same appears on record on the files of my office.

Witness my hand and seal official this 20th day of August, A. D. 1884.

[Seal U. S. Circuit Court, 5th Circuit, Northern District of Florida.]

F. C. HUMPHREYS,
Clerk U. S. Courts.

[Endorsed:] Transcript of record in case of W. H. Hutchinson, adm'r, *et al. vs.* Geo. S. Wells *et al.*, Otto Goldstuker *et al.* Case No. 63.

Endorsed on cover: N. Florida C. C. U. S. No. 657. George S. Wells, Samuel Myerson, Barbara Wells (intervenor), and William Caro, executor of E. J. Caro, deceased; M. C. Duval, and Irene C. Williams (intervenors & warrantors), plaintiffs in error *vs.* W. H. Huthinson, sheriff and *ex-officio* administrator *de bonis non* of James Rushton. Filed 10th October, 1884.

Office Supreme Court U. S.
FILED.
OCT 21 1885
JAMES H. McKENNEY.
CLERK.

No. 657.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1885.

GEORGE S. WELLS, SAMUEL MYERSON & JOHN WHITE, } Plaintiffs in Error.

vs.

W. H. HUTCHINSON, Sheriff, and Ex-Officio Administrator *de bonis non* of the estate of Jas. Rushton, deceased, } Defendant in Error.

Writ of Error to the Fifth Judicial Circuit, for the Northern District of Florida.

BRIEF FOR PLAINTIFFS IN ERROR.

TUCKER & THOMPSON, of Counsel for the Plaintiffs in Error.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1885.

GEORGE S. WELLS,
SAMUEL MYERSON,
JOHN WHITE. } Plaintiffs in Error.

vs.

W. H. HUTCHINSON, Sheriff, and Ex-Officio Administrator de bonis non of the Estate of JAS. RUSHTON, deceased. } Defendant in Error.

Writ of Error to the Fifth Judicial Circuit, for the Northern District of Florida.

TUCKER & THOMPSON, of Counsel for the Plaintiffs in Error.

STATEMENT OF CASE.

This case comes here by Writ of Error to the Circuit Court of the Fifth Judicial Circuit, Northern District of Florida. The plaintiffs in Error (who were defendants in the court below) were sued in Ejectment for the recovery of lot one (1), block four (4), Pintado Plan, of the city of Pensacola. The defendants (Plaintiffs in Error), pleaded first, the general issue not guilty. Secondly, that the suit was not brought within seven years next after the accruing of the

right of action Upon these pleas, were issues of fact. At
trial which occurred on the 3rd day of March, A. D., 18
the plaintiffs to prove his title, offered in evidence cert
instruments of writing purporting to be his claim of title,
wit: a certified copy of a paper purporting to be a deed fr
John Stevenson to John Tolbert; Secondly, a certified c
of a paper purporting to be a deed from John Tolbert to
nito Caro; Thirdly, a certified copy of a paper purportin
be a deed from Benito Caro to Gabriel de Rivas; Fourth
a certified copy of a paper purporting to be a deed from
ria Moreno Rivas to Towns & Co.; Fifthly, a certified c
of a paper purporting to be the proceedings of the Span
Tribunal, authorizing Maria Moreno Rivas, as Executri
Gabriel de Rivas, to make the conveyance to Towns &
Sixthly, a certified copy of a paper purporting to be a d
from John Edgeley, as surviving partner of Towns & Ed
ley, to James Rushton. To the introduction of these pap
in evidence, the defendants (Plaintiffsin Error), objected
the grounds following to-wit:

First. The papers offered in evidence, and purporting
be certified copies of Original Deeds, are not the best evide
of which the case is susceptible.

Second. That being copies, they cannot be received in
dence until the Original Deeds of which they purport to
copies, have been produced or their loss accounted for.

Third. That there is no evidence that the Records fr
which the papers offered in evidence, purport to have b
copied, are the Spanish Archives, transmitted and turn
over to the government of the United States, by the gove
ment of Spain, under the treaty of 1819, by which the Fl
das were ceded to the government of the United States.

Fourth. That there is no evidence that Filo E. de la R
whose certificate as keeper of the Spanish Archives is
fixed to the papers offered in evidence, is, or ever has been
possession of the said Spanish Archives, and that until
dence is introduced to show that the United States gove
ment had parted with its possession and custody of said
chives, and had surrendered them to the State of Florida,
said de la Rua, the documents offered as copies from said

chives cannot be received in evidence. The court below overruled all of these objections, and permitted the papers objected to, to be read as in evidence. To this ruling of the Circuit Court, the Plaintiffs in Error excepted and assign said ruling for Error.

Fifth. The court in its charge to the Jury, instructed them, that the deed of conveyance from Edgeley, as surviving partner of Towns & Edgeley, to James Rushton, was sufficient in law to pass the title to said Rushton. To this part of the charge the Plaintiffs in Error excepted, and assign a second Error.

The jury having found a verdict for the plaintiff, the defendants (Plaintiffs in Error), moved the court to set aside the verdict, and to grant a new trial on the following grounds to-wit:

FIRST.

The court erred in admitting in evidence certified copies of deeds purporting to be from the Spanish Archives, without requiring the plaintiff to show that the Originals could not be obtained, and without first showing that they were not within the party's power, custody or control.

SECOND.

The court erred in instructing the jury that the sale by a surviving partner was sufficient to convey title without requiring the plaintiff to show that John Edgeley was the surviving partner of Towns & Co.

THIRD.

The verdict rendered herein is contrary to the evidence.

FOURTH.

The verdict is contrary to law.

FIFTH.

That no agent has authority to appoint an agent to represent his principal without special authority for that purpose; nor has any person the right to assume an agency without express authority or appointment so as to make or operate as

an adverse possession against defendants. That no agency was established in this case by the plaintiff.

SIXTH.

That there is no evidence that Filo E. de la Rua is the keeper of the Spanish Archives, nor that the papers furnished by him and admitted in evidence, are from the said Archives. This motion coming on to be heard on the 11th day of March, A. D. 1884, was argued and overruled, to which Plaintiffs in Error excepted and assigns a third Error.

ARGUMENT.

As to the first objection, that the certified copies were not the best evidence of which the case is susceptible. The rule is well established, that in the production of evidence, the best evidence of which the case in its nature is susceptible, must be produced.

Vide Greenleaf on Evidence, Vol. 1, Sec. 82.
Taylor vs. Riggs, 1 Peters, 591, 596.
United States vs. Reyburn, 6 Peters, 352, 367.
Minor vs. Tillotson, 7 Peters, 100, 101.
Shoenbergher vs. Hackman, 37 Penn. St. Rept. 887.

The rule is, says Mr. Greenleaf, "adopted for the prevention of fraud ; for when it is apparent, that better evidence is withheld, it is fair to presume that the party had some sinister motive for not producing it, and that if offered, his design would be frustrated. The rule thus becomes essential to the pure administration of justice."

Vide Greenleaf on Evidence, Vol. 1, Sec. 82, & Notes.

"Falsi praesumptio est contra eum qui testibus probare conatur id quod instrumentis probare potest."

The rule excludes all evidence which itself indicates the existence of more original sources of information.

Minor vs. Tillotson, 7 Peters, Repts. 100, 101.

A title by deed must be proved by the production of the deed itself, if it is within the power of the party ; for this is the best evidence of which the case is susceptible; and its

non-production would raise a presumption, that it contained some matter of apparent defeasance.

United States vs. Reyburn, 6 Peters, 352, 367.

Bank of the United States vs. Dandridge, 12 Wheaton, 70.

Until it is shown that the production of the primary evidence is out of the party's power, no other proof of the fact is in general admitted.

Vide Sebree vs. Dorr, 9 Wheaton, 558, 563.

Hart vs. Yunt, 1 Watts, 253.

The Circuit Court should not have permitted the plaintiff to use a certified copy of the deed until he had first shown that the original was not within his power, custody or control.

Vide Sebree vs. Dorr, 9 Wheaton, 558, &c.

All evidence falling short of this in its degree, is termed secondary. The plaintiff in the court below insists that under the law of Florida, regulating such matters, he is authorized to substitute certified copies for originals, and to use them the same as if they were originals.

Vide McClellan's Dig. Laws of Florida, p 514, Sec. 8.

The statute in question provides, that a certified copy of a record of a deed shall be received in evidence in the same manner as the original thereof may be, and with the like force and effect.

McClellan's Digest 514, Section 8.

The Supreme Court of Florida, in interpreting this same statute, say: "A certified copy of a record of a deed is not made evidence without other proof of the original, than the proof or acknowledgment taken before the acknowledging officer. * * * How is an original deed of conveyance by a third person duly acknowledged made evidence? The rule is well established that a deed offered in evidence by a party claiming under it, must be proved by the subscribing witnesses if they are living, and within the process of the court, or if their testimony is not so obtainable, by proving their hand writing.

Greenleaf on Evidence, Sec. 569.

Skinner vs. Pinney, 19 Florida, 46, 47.

Further speaking in the same case, the Court proceeds to say: The result is that under our statute a certified copy of a private deed duly received, may be recorded as evidence, only where the original is duly proved to have been executed or as secondary evidence.

Ibid, p 48; also Vol. 2, Cowen & Hill's Notes to 4th American Edition of Phillips on Evidence, 582, Note 479.

In Hogans et al vs. Carruth, 18 Fla., p 593,

which was a much stronger case than is made here—because the deeds were originals—the Supreme Court of Florida say: As to the deeds proposed to be introduced in this case:

"These deeds are original deeds, introduced by and coming from the possession of the defendant. Such deeds at common law, do not prove themselves, and in this State an original deed, whether its execution has been acknowledged or proved under the Statute of November 15th, A. D. 1828, or not, is not made evidence by any statute known to us. The certificate or acknowledgment is not a common law certificate, but is altogether statutory in its character, and can serve no other purpose under the statute than that declared by the statute, which is to authorize a record thereof, "in the office assigned by law for that purpose.'"

Vide 50 Texas, 62.

2d Phillips on Evidence, 4th American Edition, Cowen & Hill's Notes, 584, 585.

1 Peters Circuit Court Repts. 437.

5th Alabama, 300.

2d Alabama, 203.

51 Ala., 340.

4th Blackf. 522.

5th Blackf. 79.

9th Mass. 211.

So that it is clearly to be seen that the position assumed by the Defendant in Error, has been passed upon and decided adversely to ~~their~~ his claims. The statute at best provides only a method for the recording of a certified copy of an ori-

ginal deed which has been duly proved to have been executed by one of the subscribing witnesses, or in such other manner as the law directs. Thus it will be seen that all of the papers offered by the plaintiff, and admitted in evidence by the court, were clearly not admissible by the best established rules of law.

Vide Greenleaf on Evidence, Section 82, Wright vs. Tatham.

1 Ad. & El. p 3; Greenleaf Vol. 1, Secs. 569, and 575.

By the treaty between the government of the United States and the government of Spain, made Feb 22d, 1819, (Vide Art. 2), it is provided that his catholic Majesty cedes to the United States, in full property and sovereignty, all the Territories which belongs to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of said provinces, are included in this article. The said archives and documents shall be left in possession of the commissaries, or officers of the United States duly authorized to receive them.

Vide U. S. Statutes relating to District of Columbia, Post Roads and Treaties published 1875, p 713, Article 2 of Treaty.

If as is stated in the Treaty, these Archives were to be turned over to the United States, or to the officers appointed by the United States to receive them, the United States could not in good faith part with the possession without some governmental order. There is nothing in the records to show, nor was there any thing in the court below, to show that these Archives had ever passed from the possession of the United States, by any Act of Congress, public or private, or by any order of the Treasury Department, who were at that time, (1819 to 1826), the repository for these Archives and documents. There is nothing in

the record to show that these Archives were in the possession of an officer of the United States government.

Upon the contrary, it is shown most clearly that the person in possession of the Archives (if such thing exists), is one holding them in open defiance and adversely to any claim the government of the United States may set. Filo E. de la Rua, the person spoken of as keeper of the Spanish Archives, holds his office by virtue of an Act of the Legislature of Florida, passed November 27th, 1861.

Vide Sec. 10, chp. 1296, McClellan's Digest, p 109.

In November, 1861, there was no comity of interest between the government of the United States and the government of Florida, the State of Florida having prior to that time passed its ordinance of secession, and severing its connection with the American Union.

The State of Florida, at the time of passage of the Act in question, was in open war with the United States, and all powers that were friendly to the government. Therefore any act or thing done by the government of Florida, having for its purpose the disposition or management of any property or other thing belonging to the United States, was in open and flagrant violation of the rights and powers of the United States in the premises. If it be contended or admitted that said de la Rua has ever been appointed to hold said Archives by virtue of any Act of the United States, or of any person or power acting for the United States, such appointment became null and void and inoperative by the secession of Florida from the Union. This is more apparent from a perusal of the act of Nov. 27th, 1861. The act provides "that Filo E. de la Rua, of the County of Escambia, be, and he is hereby authorized to hold, exercise and perform the duties of the office of keeper of the Spanish Archives at the city of Pensacola, to which said office he has heretofore been appointed by the Governor and General Assembly of this State." To which said office he has heretofore been appointed by the Governor and General Assembly of this State! By whose authority? When and where did the Governor and General Assembly of Florida get their authority to name an agent or keeper of, or for the papers belonging to the United States,

or that should have been at least under the indirect control, custody or authority of the government of the United States? If the government of the United States have preserved these Archives and documents intact since their surrender by the Spanish government, whence came this right of the State of Florida to legislate concerning them?

These Archives and documents were delivered to the government of the United States, by the government of Spain, ostensibly for the purpose of providing a means by which any citizen remaining in this country after the exchange of flags might find and work out any title that he had derived from the government of Spain, without the necessity of sending to the Spanish home government or the Archive office in Havana. This being the case, the government of the United States was bound by all the rules of international law, and the rules and laws governing the comity between nations to keep these Archives in such a place and such a condition that the responsibility due from this government to the government of Spain, would not be impaired.

Yet we have here an Act of the Legislature of Florida, passed without any authority, directly or indirectly, giving, transferring and delivering the control and custody of these Archives to one Filo E. de la Rua. If the Legislature of Florida had no authority from the government of the United States, then the Archives have never been out of the possession of the Federal government, and any Act of the Florida Legislature, looking to the management of these Archives is void. Even if the Act of the Legislature of Florida was valid and confered the right to keep these Archives upon Filo E. de la Rua, copies could not be used, if the opposing party demand the original deed.

Vide McClellan's Dig. Laws of Fla., p 108, Sec. 5.

Now as to the second assignment of Error, we say: that the charge of the Court was clearly erroneous. The evidence of the conveyances as contended for by the Defendant in Error, is from Maria Moreno Rivas, Executrix, &c., to Towns & Co.; then a conveyance from John Edgeley as surviving partner of Towns & Edgeley to James Rushton.

There is nothing to show that John Edgeley is the Co., mentioned in the conveyance to Towns & Co. If John Edgeley is not the Co., mentioned in the conveyance, then he had no authority to convey to James Rushton. For there is no evidence here, neither was in the court below, to show that the property in question was ever conveyed from Towns & Co., to Towns & Edgeley. If the title was never in Towns & Edgeley, then John Edgeley had no authority to convey as surviving partner of Towns & Edgeley. The court below should never have permitted this instruction. It was well calculated to embarrass and mislead the Jury. Besides if the Defendant in Ejectment can show a legal title in another person, and out of the plaintiff who is claiming possession as a right incident to legal title, it is sufficient to defeat the plaintiff's title.

Hogane et al vs. Carruth, 18th Florida, 587.

Thus it will be seen that the Court deprived the defendants of the right to show an outstanding title in a third person. If the defendants had been permitted to show title in Towns & Co., this would have destroyed any idea of a title in Towns & Edgeley. We have argued thus by way of showing the effect of the charge, had there been a good and sufficient paper title in the plaintiff. The doctrine laid down by the court, that a sale by a surviving partner is sufficient in law to pass title, is correct in principle and practice, but in such cases it is always the duty of the person claiming under such title to show that the grantor is in fact the surviving partner. That is, he must show the existence of a co-partnership at sometime, and that one of its members has died. Unless this be affirmatively shown, the court has no power or authority to assume that such an institution did exist, and that therefore some one before it is the surviving partner of such institution. If the rule laid down by the Circuit Court, were allowed, any person might come into Court and arrogate to himself the rights of a surviving partner, and thus break away all the barriers that protect the innocent person from the evil disposed and designing.

Vide Story on Partnership, Secs. 344-47.

MOTION FOR NEW TRIAL.

This motion should have been allowed. We discuss the subject now as though these Archives had by an Act of Congress been deposited with officers named by the United States government, (which is not the fact), and still whithersoever we turn we reach the same inevitable *cui bono*. The objection still remains that if these Archives were in the possession of an officer appointed by the United States government, still the certified copies were not the best evidence of which the case was susceptible. These Archives cannot, like the records of a Judicial Tribunal, be used in evidence without accounting for the loss of the originals. A certified copy of a judgment or decree of any Court of Record, can ordinarily be used in evidence without any further proof than that of the seal of the Court. This seeming difference in the rule is made for convenience and practicability. It would be very onerous for any ministerial officer of a court to be obliged by force of this rule to carry, in obedience to a subpœna *duces tecum*, the whole records of the court. Therefore it is, that a certified copy of these proceedings and records are received in evidence without any other formality, than examining the seal of the court. But here the exception ceases. In all other cases a certified copy cannot be used in evidence until the party offering it has accounted for the original, or shown that it is not within his power, custody or control. The statutes of Florida regulating the matter of deeds, &c, are so strict that it is not within the power of a party to use a certified copy as long as it is within the party's power to re-establish the original; and in this connection the statute provides: "If any paper be lost by an attorney or other officer of the Court after the commencement of an action theron, it shall be the duty of the said attorney or other officer to file upon oath, a substantial copy thereof, and to state that the original was in his possession, and has been lost or mislaid, so that it was not in his knowledge, control, power or custody; and if the said paper, deed or other writing be lost, by any person before the commencement of any suit thereon, it shall be lawful for the person from whose possession the same was

lost to give at least thirty days notice in writing accompanied with a substantial copy thereof to the person who made or executed said paper, or is otherwise liable for the amount of the same, stating in said notice that the original is lost and that it is his or her intention to make application to the next term of the Circuit Court of the circuit or county to establish a copy in lieu thereof; and if the said person shall file a substantial copy of said paper, on oath, with the clerk, (which oath shall also state that the original is lost or mislaid so that the same is not within his knowledge, custody or control), and shall make it appear to the Court that the said notice has been regularly served, as is herein directed, it shall be the duty of the said Court, if there be no cause shown to the contrary, to order that said copy be established in lieu of the original so lost or mislaid ; and all copies of papers established as herein prescribed, shall be as valid and effectual, for all legal purposes, as the original could have been had the same not been lost."

Section 2d provides: "The executor, assignee or heirs at law of any person from whose possession a deed, note or other writing shall have been lost, shall be entitled to establish the said deed, note or other writing in the manner prescribed in the above section."

Vide McClellan's Digest Laws Fla., p 736, Secs. 1 & 2, chap. 145.

It will be seen therefore from a perusal of the Statutes of Florida, regulating the subject that, even where the original deed is lost or mislaid so that the same is not within the power, custody or control, even then the party is obliged to exhaust all the remedies known to the statute—that is make at least an effort to establish his original deed. It cannot be contended with any considerable show of reason, that these statutes are inconvenient or oppressive. On the contrary they are good and beneficient statutes, and provide a simple and direct remedy against any and all kinds of fraud. The statutes are more beneficial and liberal to the plaintiff or claimant, because having once complied with the terms of the statute, his certified copy becomes an original deed. So the court here can see what a great disadvantage must have be-

fallen the plaintiffs in Error, when all these safeguards were overleaped or broken down, and these copies which had their birth in mystery, and their advent in anything but regularity and legality, were admitted in evidence on the trial of a case where the title to hard earned property was in question, in a government whose very palladium of liberty is based on the idea and supposition, that life, liberty and property shall not be taken without just compensation. If these Archives had any existence in fact, and if there ever were any such conveyances as are mentioned by the plaintiff in the court below, they must have been recorded at sometime in this Archive office, if there was any authority for them being so recorded. Now if there was any authority for recording these so called deeds in this Archive office, and they were so recorded, then what an easy thing under these Florida Statutes to have obtained a copy, given the required notice, had the order of the Circuit Court declaring it an original, and avoid all the perplexity and annoyance incident to the introduction of a certified copy in any case. If this had been done—and it was an easy matter—the Plaintiffs in Error would not be here to-day complaining that there was error in the judgment of the Circuit Court.

But as it is, there can be no doubt the Circuit Court erred in overruling the motion for a new trial on the first ground. As to the second ground, that the court erred in instructing the jury that the sale by a surviving partner was sufficient to convey title, without requiring the plaintiff to show that John Edgeley was the surviving partner of Towns & Co.; This error has we believe, been so fully discussed in the first argument, that we have no hesitation in leaving it entirely to the judgment of the Court here.

THE THIRD GROUND.

The evidence having been so stubbornly disputed all the way through this case, and having been disputed on the ground that the documentary evidence was of that nature that it could not be received in evidence under the most favorable circumstances, and the court having permitted these documents to be used in evidence, notwithstanding the ob-

jection to them, it must be conceded on all sides, that the verdict was contrary to the evidence. The evidence having been illegal evidence, it cannot be contended that there was any evidence at all. There being no evidence at all, the verdict was *contrary to the evidence.*

THE FOURTH GROUND.

It must be admitted as a legal principle, that wherever there is an issue of fact made in any pleading, the rules of law must govern both pleadings and evidence or the verdict is contrary to law. Contrary to law! What do these words mean, and signify? That every right which the party enjoys both legal and equitable, has been made subservient to some arbitrary rule not known to those who practice the law as a profession or to its admitted precepts.

On the fifth ground, there can be no question. An agent has no authority to appoint an agent.

Vide Broom's Maxims, 385, *and notes.*

2d Kents Commentaries, 633.

This is in perfect keeping with the civil law, whose maxim was *"constat procuratorem alium procuratorem facere non posse."*

Vide also Story on Agency, Sec. 13.

In this case we begin by saying that an agency never existed. If the father of G. O. Brosnaham was in fact the agent of any such person as Rushton, and this remarkable discovery was made by the son of Mr. Brosnaham after the death of his father, how is it that the original appointment of agency from the Rushtons to the deceased Brosnaham is not proved or shown, but the whole matter is left to the memory of one who claims to be executor of the deceased Brosnaham? The witness G. O. Brosnaham testifies that he never had nor has he now, any knowledge of these supposed Rushtons. That all he knows of them is that he came to the agency by reason of the fact that he was his father's executor. Now if his father had in fact been an agent of these supposed Rushtons, it would not have been within power to have delegated that agency to any one without the express order or

consent of his principal; or that principal had given his express authority to delegate that agency.

Broom's Maxims, 384, 665, Story on Agency, Sec. 13.
11th Howard 223.

The fact here is that the father of the witness Brosnaham was agent from 1832 until his death, which occurred about the year 1870. This agency may have had existence in fact, but where is the proof of it? And if there was any proof of it, where is the proof that the deceased Brosnaham had any authority to name his successor to be agent of James Rushton, or any other person he might represent? To see at once that this supposed James Rushton is a myth, and that no such agency ever existed in fact, we must look straightway to the testimony of the living Brosnaham. Hear him!

"My father was the agent of a Mrs. Hannah Rushton whom I believe was the widow of James Rushton. I do not know that she was the widow of James Rushton; I think she was from papers I found among my father's papers after his death. I have never had any communication with, or appointment from the Rushtons myself. The only dealing I have ever had with them was as my father's Executor to send money to some person in New York who claimed to be the agent of the Rushton heirs." Now, see the anomaly of the whole transaction! A man representing an estate worth more than five thousand dollars, the beneficiaries of that estate all living, and in New York, this agent dies, and there is no more said about it until the present claimants turn up; *then this agent in New York is found, then this Mrs. Hannah Rushton* comes forward and everything necessary to perfect a title in the plaintiff in the court below, (Defendant in Error) suddenly springs up. This to say the least of it, is refreshing to a reflecting mind. If this deceased Brosnaham had had authority to appoint a sub-agent the court below should have required the Defendant in Error to show that, before permitting G. O. Brosnaham to testify as an agent representing a direct principal.

Delegata potestas non potest delegari.

Vide Broom's Maxims, 384; Story on Agency, Sec. 13.
11th Howard, 223.

This evidence was introduced for the purpose of showing

that the Statute of Limitations had not run against the plaintiff. In order to show this, there must have been an open undisputed possession for seven years next before the commencement of the suit. There being no proof of the agency in this suit no such limitation can be presumed against the Plaintiffs in Error! Having discussed these propositions, as we believe fully, and confidently believing that the Defendant in Error showed no title in himself to the property in question, we ask that the judgment of the Court below be reversed, and that a judgment be, by order of this Court, entered for the Plaintiffs in Error.

~~PUCKER & THOMPSON,~~

J. P. Thompson Of Counsel for Plaintiffs in Error.

Office Supreme Court U. S.
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JAMES H. McKENNEY.
CLERK.

Supreme Court of the United States.

OCTOBER TERM A. D. 1885.

(NO. 254.)

JAMES K. JOHNSON *et al* } Plaintiffs in Error.

vs.

W. H. HUTCHINSON, Sheriff, and Ex-Officio Administrator *de bonis non* of the estate of Jas. Rushton, deceased. } Defendant in Error.

Writ of Error to the Circuit Court for the 5th Judicial Circuit, Northern District of Florida.

BRIEF FOR PLAINTIFFS IN ERROR.

TUCKER & THOMPSON, of Counsel for the Plaintiffs in Error.

Supreme Court of the United States.

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Writ of Error to the Circuit Court for the 5th Judicial Circuit, Northern District of Florida.

STATEMENT OF CASE.

This case comes here by writ of Error to the Circuit Court of the 5th Judicial Circuit for the Northern District of Florida. The plaintiff in Error, James K. Johnson, was sued in ejectment in the State Circuit Court for the 1st Judicial Circuit of Florida. Being the tenant and lessee of E. J. Caro, Matilda C. Duval and Irene C. Williams, citizens of Alabama, the said E. J. Caro, Matilda C. Duval and Irene C. Williams, intervened, and on the 31st day of October A. D., 1881, removed said case into the United States Circuit Court Prior to this removal the defendants (plaintiffs in Error) had plead not guilty. On the 2d day of March, A. D., 1883, the defendants by leave of Court, filed three additional pleas. The first of which was that more than twenty years had elapsed since the death of James Rushton, and therefore a presumption was raised that his estate was settled. Second, that there is no record showing that an administrator *de bonis non*, had been appointed by the proper authorities. The third plea was that there had been a prior trial and recovery

between the parties, and that the Caros who intervened were then holding under and by virtue of that recovery and judgment. On the 3rd day of March, 1883, the plaintiff filed a general demurrer to the defendant's pleas. This demurrer coming on to be heard was sustained by the Court. There was no bill of exceptions taken at the trial and the plaintiffs in Error rely solely on the errors apparent *in the record.*

In the court below a verdict and judgment was rendered for the plaintiff, and the defendant brings a writ of Error and seeks to have the Judgment reversed.

ARGUMENT.

If more than twenty years had elapsed since the death of the *supposed* James Rushton, the presumption would be very strong in favor of a settlement of the estate ; and if any one after such a long lapse of time was sued as administrator, he certainly could plead *Plene Administravit.*

Vide 1 Tidd's Practice, 644.

An administrator can only sue in his official character when he is suing for and on behalf of the estate he represents. He can do no act to bind the estate, unless he does it in his official character.

Howse vs. Moody *et al*, 14 Fla., 59.

Under the laws of Florida, the Sheriff is not by virtue of his office the administrator of a deceased person, and can do no act to bind the estate as administrator, until so empowered to act by the Probate Court ; and a judgment entered against a Sheriff as administrator ex-officio who is not empowered so to act by the order of the Probate Court, can not bind the estate.

Vide chapter 157, Laws 1848, Sec. 3.

Davis vs. Shuler, 14 Fla., 438.

Parkhill's Administrators vs. The Union Bank 1 Fla., 110.

Manley & Moseley Administrators vs. Union Bank, 1st Fla., 160.

The proper evidence that one is an administrator, or administrator *de bonis non* is the letters of administration, or a certified copy of the order directing the Sheriff to act as such.

Vide Davis vs. Shuler, 14 Fla., 438.

Pittman's Administrator vs. Myrick, 16 Fla., 692.

Wilson's Administrator *et al* vs. Dibble, 16 Fla., 782.

Any plea which puts in issue the character of the plaintiff or the character in which he sued, was under the rules of pleading a good plea, and should have been sustained by the court below. If the plaintiff could not show by the records of the Probate office that he had been *authorized* and *directed* by the *Probate Court* to take charge of the decedent's estate, then his suit would be abated, because he could not sustain the character in which he sued. If the defendants offered an issuable plea, such a plea as would enable the parties to plead afterwards *Res Judicata*, it should have been sustained. The plea here certainly raised a question of fact, and in raising the question of fact should have been left to the Jury.

3 Kent's Coms. 120.

3 Hill's (N. Y.) Reports 399.

Deans vs. Wilcoxon, 18 Fla., 531.

The plea is "that there is not in existence any record which shows that an administrator *de bonis non* was ever appointed to administer on the estate of Rushton." It was an easy thing for the plaintiff to take issue upon this plea. If there was no record of the plaintiff's appointment as Administrator *de bonis non*, then his attempt to sue in that character is defeated at once. The plea does not deny his official character by implication alone, but denies it most emphatically.

Vide plea in Record, Page—

A plea of former Judgment and recovery is always allowable.

Vide Armstrong vs. Carson, 2 Dallas, 302.

Mills vs. Duryee, 7 Cranch 481, 487.

The plaintiff admits the former trial and recovery when he demurs to the plea.

Vide Chitty on Pleading, 701.

Weems vs. Willard, 2 Harr. & Gill. 143.

Ward vs. Sackrider, 3 Caine 263.

Cook vs. Graham's Admr. 3 Cranch 235.

We think upon an examination of the whole record, the judgment of the court below should be reversed.

~~TUCKER & THOMPSON,~~

J. D. Thompson Of Counsel for Plaintiffs in Error.

OFFICE SUPREME COURT U. S.
FILED
1885
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1885.

GEO. S. WELLS, SAMUEL MYERSON, *et al.*

vs.

WM. H. HUTCHINSON, admr., *de bonis non.*

WRIT OF ERROR, FROM NORTHERN DISTRICT OF FLORIDA, FIFTH CIRCUIT.

ARGUMENT.

C. C. YONGE, Sr.,

Attorney for the Defendant in Error.

NEW YORK:

N. Y. ECONOMICAL PRINTING CO., 24 VESEY STREET.

1885.

Supreme Court of the United States.

OCTOBER TERM, 1885.

GEO. S. WELLS, SAMUEL MYERSON, *et al.* *vs.* WM. H. HUTCHINSON, admr., *de bonis non.*	WRIT OF ERROR, FROM NORTHERN DISTRICT OF FLORIDA, FIFTH CIRCUIT.

The written agreement on file to submit these cases on brief, extends to the *dismissal* of the cases as well as to such other judgment as the Court may render.

The Defendant in Error moves to dismiss the Writs of Error in each case upon the ground that the value of the property in controversy is less than $5000, and in support thereof offers the following affidavits numbered 1, 2, 3. &c. hereto attached.

This case comes by Writ of Error from the Northern District of Florida in the Fifth Circuit, and is an action of Ejectment brought by W. H. Hutchinson, admr., *de bonis non* of James Rushton *vs.* Geo. S. Wells, Barbara Wells, Samuel Myerson, *et al.*, for the recovery of a portion of Lot 1, Sq. 4, in the city of Pensacola, Fla.

The first plea is "Not guilty," filed 3d September, 1883, on which issue is joined. See p. 10.

The remaining plea or pleas were filed 8th March, 1884, and were demurred to. See p. 8, 9.

These last are very inartificially drawn, and I do not know whether they were intended as one plea or a number of pleas. At any rate they all relate to the same matter, and the substance is, that all the rights of the plaintiff Hutchinson administrator of Rushton, were adjudicated in another case, to wit, the case of the defendants below *vs.* Carr & Jolly, partners, who were tenants of W. W. Carr, administrator of James Rushton. The administrator of Rushton not having been a party to that suit, the judgment rendered therein, of course, could not affect the rights of the estate, and though the pleas were demurred to (see p. 8), the pleas seem to have been overlooked by the Court and abandoned by the defendants below, no order appearing on the record relating to them, and no reference being made to them in the brief of the plaintiff in error, they were probably stricken out and copied in the record by mistake.

The only plea in this case is "Not guilty," and the attorneys of the plaintiffs in error are mistaken when they say in their brief that the Statute of Limitations was plead (p. 1 of brief). By order of the Court (see p. 3), the pleadings, evidence and bill of exceptions in this case were to be admitted in all the cases brought by Hutchinson, administrator of Rushton, W. H. Hutchinson, administrator, *vs.* Wells, Nicholls, *et al.*; same *vs.* Wells, White, *et al.*; same *vs.* Wells, Mark Fuller, *et al.*; and same *vs.* Goldstrecker, *et al.*

The jury found for plaintiff below, and judgment was entered accordingly.

See Bill of Exceptions, pages 6, 7.

Plaintiffs in Error insist that the Court erred in admitting in evidence the certified copies of the title papers to the property in controversy.

1st. Because they were copies and no proof had been made of the loss of the originals.

2d. Because there was no evidence that the records from which these papers came were the Spanish Archives.

3d. That there was no evidence that Filo de la Rua, whose certificate as Keeper of the Spanish Archives is attached to the copies, ever had possession of said Archives.

4th. That it was error to charge that the deed by Edgely, as surviving partner of Towns & Co., to James Rushton was sufficient to pass title to Rushton.

5th. That an agent has no authority to appoint an agent, meaning thereby that the father of witness G. O. Brosnaham, who had acted as the agent of the Rushtons from the year 1832 to his death in 1870, thirty-eight years, had no authority to appoint witness, G. O. Brosnaham, agent to succeed him.

And then the attornies for the defendants moved for a new trial on the same grounds, and also that the verdict was against the law and the evidence.

ARGUMENT.

In regard to the motion for new trial, it is sufficient to say that the refusal of the Court below to grant it is not reviewable in this Court.

See 18th Wal., 382.

The answer to the first objection made to the admission of the title papers of the plaintiff, on the ground that they were copies and no proof had been made of the loss of the originals, is,

1st. That under the law and practice in the Spanish colonies, original title papers were never delivered to the parties. All sales and conveyances of Real Estate were made by judicial tribunals, and the evidence of the sale is

retained in the office in which the sale is made. The purchaser has no original muniment of title, and all he can get is a certified copy of the Act of Sale. In point of fact, he rarely gets that, being content that the evidence of his title is preserved by the Government.

2d. Under the laws of Florida, certified copies of all records, deeds, etc., which are required to be filed or recorded in any public office of the State are made evidence with like force and effect as the originals, leaving it discretionary with the Court to require the parties to produce or account for the originals.

See McClellan's Digest of the Laws of Fla., p. 514, sec. 8.

The Court in this case did not see proper to require the parties to produce or account for the originals.

The second and third objections, that there was no evidence that the records from which the papers came were the Spanish Archives, and that there was no evidence that Filo de la Rua, whose certificate as Keeper of the Archives was attached thereto, ever had possession of the Archives, are answered by the decisions of this Court, and by the decisions of the Supreme Court of Florida, that papers so certified by the Keeper of the Spanish Archives are admissable in evidence, and by the universal practice of the Courts in Florida ever since the establishment of the office of Keeper of the Archives.

See Magruder *vs.* , Fla. Repts.

According to these decisions, copies of papers that purport to be signed by such officer are received in evidence, and it will not do to attempt to impeach them by the suggestion of the absence of affirmative proof that they are what they purport to be.

Official character is proved by official acts, and where a party desires to impeach official acts he must first impeach official character. He can not bring in question official character collaterally.

That La Rua was the keeper of the Spanish Archives is, however, shown affirmatively by the certified copy of his appointment by the Legislature of Florida, which is made a part of the Bill of Exceptions.

See p. 7 of Record.

The certificate of La Rau as keeper of the archives, that they are true copies from the archives, proves that they are true copies and also proves that he has possession of them.

The certificate says they are true copies from the "records in my office."

The title of Rushton is traced back by the exhibits on file to a deed made by Benito Caro to Gabriel Rivas, dated 24th July, 1797, in which it is recited that he, Benito Caro, purchased the lot from Joseph Colbut in 1787. See pp. 14 15. Pages 15 to 22 inclusive of the transcript contain the proceedings of the Spanish tribunal showing the sale of the property which then belonged to the estate of Gabriel Rivas to Edward Towns & Co., and on pages 26, 27 is found the conveyance of John Edgely and John Simpson, surviving partners of Towns & Co., to James Rushton. It is not necessary, however, to trace the title further than to John Edgely, as the certified extract from the proceedings of the U. S. Land Commissioners, taken from the American State papers, vol. 4, which is embraced in the Bill of Exceptions, p. 3, and which was produced in evidence of the title without objection thereto, shows the title to have been in him at that time. The foregoing referred to copies of deeds, show the title to have been in Towns & Co., and the deed of Edgely & Simpson, surviving partners of Towns & Co., show it to have passed to James Rushton.

According to the laws of Florida, in an action for recovery of real property, the person establishing a legal title to the premises, shall be presumed to have been possessed thereof within the time prescribed by law, to wit.: within the seven years prescribed by the statute.

See McClelland's Digest of Florida Laws, p. 731, sec. 4.

The next error assigned is that the Court erred in charging that the deed from John Edgely, as surviving partner of Towns & Co. was sufficient to pass title without showing that Edgely was the surviving partner of Towns & Co.

It makes little difference, practically, whether he was a partner of Towns & Co. or not, in this case. If Rushton acquired the title from Edgely and went into possession and held that possession, as shown by the evidence of Brosnaham, for more than a quarter of a century, it would constitute a sufficient title in itself to authorize a recovery in ejectment, and this whether Edgely had title or no title.

See page 5 of Record. Also see

But it is submitted that the execution of the deed by John Edgely and John Simpson, as surviving partners of Towns & Co., with no objections made by Towns' representatives, raises such a presumption that they were such surviving partners as would dispense with affirmative proof of such partnership at least between strangers having no interest in such alleged partnership.

The acquiescence of Towns and his representatives, as far as any thing in the record goes to show, from the year 1823 to 1884, more than sixty years, would seem to close the mouths even of the representatives of Towns to make objection, much more would it silence strangers to the transaction.

5th. Lastly. It is objected that an agent has no authority to appoint an agent, and that G. O. Brosnaham could not act as an agent of Rushton, without a new appointment, after the death of his father, who had acted as agent from 1832 to 1870.

There is no question of strict agency involved in this case. Brosnaham, Sr., certainly *acted* as agent for Rushton during this long period of time—thirty-eight years. He held possession of the property for the Rushton estate, collected and remitted rents, and when he died his son continued in possession and continued to make remittances. His acts as agent were adopted by receiving the rent remittances, and his possession of the property in controversy was the possession of the Rushton estate.

Subsequently W. W. Carr became administrator, and as appears by the plea of the defendants (see transcript p. 9) the said lot 1, sq. 4, was in the possession of Carr and Jolly as tenants of W. W. Carr, administrator of James Rushton, as late as the year 1880.

It makes no difference then what the doctrine of agency may be as regards the power of substitution.

I have thus endeavored to reply to all the points made by the plaintiffs in Error. The Bill of Exceptions is in very imperfect shape. It does not purport to embody the whole testimony and in point of fact contains only a small part of it. It is, perhaps, difficult for this Court to determine from the transcript of the Record before it whether the plaintiff below made out a case entitling him to a verdict and judgment or not, and all the Court will undertake to do, I apprehend, will be to decide whether there are such errors apparent on the Record that will require the Court to send the case back for correction. That there are irregularities may be true, but they are not attributable to the defendant in Error, but to the carelessness of the plaintiffs in Error. These irregularities, however, do not go to the merits of the

case. If these irregularities were corrected the plaintiffs in error would still be without a case. The universal practice of this Court in such cases, I think, is to affirm the judgment. Owing to the large accumulation of business on the docket of this Court, and the consequent delay involved in another trial in the Court below, and another Writ of Error, and the fact that we have but one term of the Circuit Court in a year in Florida, the remitting of this case for another trial would be almost as disastrous as an adverse decision. I think there is enough in the Record to show that the Plaintiffs in Error have no shadow of right to the property in controversy, the possession of which they have accidentally acquired.

C. C. YONGE, Sr.,
Att'y for Defendant in Error.

NOTE.—The cases of Wells, *et al.*, *vs.* W. H. Hutchinson, and Goldstrecker, *et al.*, *vs.* the same, being five in number, to-wit, 657, 658, 659, 660 and 661, are all for the recovery of portions of Lot one, Square four, in City of Pensacola, and depend upon the same pleadings, evidence and rulings of the Court, and are all submitted under the same Briefs.

C. C. YONGE, Sr.,
Att'y for Defendant in Error.

This affidavit relates to all the cases, to wit: Nos. 657, 658, 659, 660, 661, 662, and is made by Francis Walsh, one of the two original affiants on whose affidavits the writs of error were granted.

He now swears the property in each case does not exceed $2,000 in value, and that his former affidavit (see Record, p. 28) was made under a mistake as to the dimensions of the lots in controversy.

The other witness, B. C. Willis, is not now accessible. He would, doubtless, make the same explanation.

C. C. YONGE, Sr.,
For Def't in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

W. H. HUTCHINSON, Adm'r *de bonis non* of the estate of James Rushton, Dec'd,
vs.
JOHN WHITE *et als.* } No. 661.

W. H. HUTCHINSON, Adm'r, &c., of Jas. Rushton, Dec'd,
vs.
S. MYERSON *et als.* } No. 657.

W. H. HUTCHINSON, Adm'r, &c., of James Rushton, Dec'd,
vs.
N. NICHOLS *et als.* } No. 659.

W. H. HUTCHINSON, Adm'r, &c., of James Rushton, Dec'd,
vs.
OTTO GOLDSTUCKER *et als.* } No. 658.

W. H. HUTCHINSON, Adm'r, &c., of James Rushton, Dec'd,
vs.
HENRY MUELLER *et als.* } No. 662.

W. H. HUTCHINSON, Adm'r, &c., of James Rushton, Dec'd,
vs.
MARK FULLER *et als.* } No. 660.

Francis Walsh, after first being duly sworn, says that the affidavits heretofore made by him as to the value of the property in concontroversy in the above-named cases, were based upon the belief that each case included all the property in controversy in all the cases, to wit: That portion of lot one (1) in square four (4), in the city of Pensacola, beginning at a point on the east line of said lot, 72 feet south of the northeast corner of said lot on Garagosso and Palafox streets; thence west 41 feet and 3 inches; thence south on line parallel with Palafox street to Main street; thence east along Main street 41 feet and 3 inches to Palafox street; thence north

along Palafox street to starting point; that he is now familiar with the property in controversy in each case, and that the value of the property in controversy in each case does not exceed the sum of two thousand dollars.

FRANCIS WALSH.

Sworn to & subscribed before me Jan'y 1, '86.
[SEAL.] WM. FISHER,
Notary Public, State of Florida.

Wells, Myerson, et al. vs. Hutchinson, Administrator, No. 657.

In the Supreme Court of the United States, Northern Dist. of Florida.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd.
vs.
S. MYERSON *et als.*

Thos. C. Watson, being duly sworn, says that he has resided in Pensacola, Florida, for fifteen years next before this date, and that he is acquainted with the value of real estate in said city, having for several years last past been engaged in the real estate business therein; that he is familiar with that part of lot (1), square (4), in controversy in this action, and that the value of said property does not exceed the sum of sixteen hundred dollars.

THOS. C. WATSON.

Sworn to & subscribed before me January 1, 1886.
[SEAL.] WM. FISHER,
Notary Public, State of Florida.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the estate of James Rushton, dec'd,
vs.
S. MYERSON *et als.*

Wm. H. Knowles, being duly sworn, says he has resided in Pensacola, Florida, for twenty-eight years next before this date, and that he is acquainted with the value of real estate in said city, having for nine years been a real estate agent in Pensacola; that he is familiar with the property in controversy in this action, to wit, part of lot one (1), square four (4), fronting on Palafox street, Pensacola, Florida, and that the value of said property does not exceed the sum of two thousand dollars.

WM. H. KNOWLES.

Sworn to & subscribed before me Dec'b'r 31st, 1885.
[SEAL.] WM. FISHER,
Notary Public, State of Florida.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,
vs.
GEORGE S. WELLS & S. MYERSON.

Thomas C. Watson, being duly sworn, says that his occupation is that of a real estate agent in the city of Pensacola, Florida, and that he is familiar with the value of real estate in said city; that he knows that part of lot one (1), old city of Pensacola, in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said property does not exceed the sum of fifteen hundred dollars.

THOS. C. WATSON.

Sworn to & subscribed before me Dec'b'r 10th, 1885.
[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,
vs.
GEORGE S. WELLS & S. MYERSON.

Peter Knowles, being duly sworn, says that he has been a resident of the city of Pensacola, Florida, for forty years last past, during the whole of which time he has been extensively engaged in the business of buying and selling real estate in said city; that he knows and is familiar with that part of lot one (1), old city of Pensacola, in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said property does not exceed the sum of fifteen hundred dollars.

PETER KNOWLES.

Sworn to & subscribed before me Dec'b'r 10th, 1885.
[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,
vs.
GEORGE S. WELLS and S. MYERSON.

Wm. Fisher, being duly sworn, says that he is a practicing attorney-at-law in the city of Pensacola, and has for seven years last past paid particular attention to the sale and rental of real estate in the city of Pensacola, and that he is familiar with the value of real

estate in said city; that he knows and is familar with that part of lot one (1), old city of Pensacola, in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said property does not exceed the sum of fifteen hundred dollars.

WM. FISHER.

Sworn to & subscribed before me Dec'b'r 10th, 1885.
[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

In the Supreme Court of the United States, Northern District of Florida.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,
vs.
S. MYERSON *et als.*

Peter Knowles, being duly sworn, says he has resided in Pensacola, Florida, for forty years next before this date, and that he is acquainted with the value of the real estate in said city, having for forty years been a dealer and owner of real estate in Pensacola; that he is familiar with the property in controversy in this action, to wit, part of lot one (1), square (4), fronting on Palafox street, Pensacola, Florida, and that the value of said property does not exceed the sum of seventeen hundred dollars.

PETER KNOWLES.

Sworn to & subscribed before me this 31st day of Dec'b'r, 1885.
[SEAL.] WM. FISHER,
Notary Public, State of Florida.

Otto Goldstucker vs. *Hutchinson, Adm'r, No.* 658.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,
vs.
O. GOLDSTUCKER.

Wm. Fisher, being duly sworn, says that he is a practicing attorney-at-law in the city of Pensacola, Florida, and has for seven years last past paid particular attention to the sale and rental of real estate in the city of Pensacola, and that he is familiar with the value of real estate in said city; that he knows and is familiar with that part of lot one (1), old city of Pensacola, in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said property does not exceed the sum of fifteen hundred dollars.

WM. FISHER.

Sworn to & subscribed before me Dec'b'r 10, 1885.

[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

In the Supreme Court of the United States, Northern District of Florida.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,

vs.

OTTO GOLDSTUCKER *et als.*

Wm. H. Knowles, being duly sworn, says he has resided in Pensacola, Florida, for twenty-eight years next before this date, and that he is acquainted with the value of real estate in said city, having for nine years been a real estate agent in Pensacola; that he is familiar with the property in controversy in this suit, to wit, that portion of lot one (1), square four (4), in the city of Pensacola, beginning at a point on east line of said lot 72 feet south of the corner of said lot on Zaragossa and Palafox streets; thence west 41 feet and 3 inches; thence south 18 feet; thence east 41 feet and three inches to Palafox street; thence north 18 feet to the beginning; that the value of said property does not exceed the sum of eighteen hundred dollars.

WM. H. KNOWLES.

Sworn to and subscribed before me January 1st, 1886.

[SEAL.] WM. FISHER,
Notary Public, State of Florida.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,

vs.

O. GOLDSTUCKER.

Thos. C. Watson, being duly sworn, says that his occupation is that of a real estate agent in the city of Pensacola, Florida, and that he is familiar with the value of real estate in said city; that he knows that part of lot one (1), old city of Pensacola, in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said property does not exceed the sum of fifteen hundred dollars.

THOS. C. WATSON.

Sworn to & subscribed before me Dec'b'r 10th, 1885.

[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonus non* of the Estate of James Rushton, Dec'd,

vs.

O. GOLDSTUCKER.

Peter Knowles, being duly sworn, says that he has been a resident of the city of Pensacola, Florida for forty years last past, during the whole of which time he has been extensively engaged in the business of buying and selling real estate in said city; that he knows and is familiar with that part of lot one (1), old city of Pensacola, in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said property does not exceed the sum of fifteen hundred dollars.

PETER KNOWLES.

Sworn to & subscribed before me Dec'b'r 10, 1885.

[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

In the Supreme Court of the United States, Northern District of Florida.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,

vs.

OTTO GOLDSTUCKER *et als.*

J. C. Pebley, being duly sworn, says he has resided in Pensacola, Florida, for ten (10) years next before this date, and that he is acquainted with the value of real estate in said city, having for eight years been a dealer and owner of real estate in Pensacola; that he is familiar with the property in controversy in this suit, to wit, that portion of lot one (1), square four (4), in the city of Pensacola, beginning at a point on east line of said lot 72 feet south of the corner of said lot on Zaragossa and Palafox streets; thence west 41 feet and 3 inches; thence south 18 feet; thence east 41 feet and 3 inches to Palafox street; thence north eighteen feet to the beginning; that the value of said property does not exceed the sum of sixteen hundred dollars.

J. C. PEBLEY.

Sworn to & subscribed before me Dec'b'r 31st, A. D. 1885

[SEAL.] WM. FISHER,
Notary Public, State of Florida.

Wells, Nichols, et al. vs. *Hutchinson, Adm'r, No.* 659.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,

vs.

GEORGE S. WELLS & N. NICHOLS.

Thomas C. Watson, being duly sworn, says that his occupation is that of a real estate agent in the city of Pensacola, Florida, and that he is familiar with the value of real estate in said city; that he knows that part of lot one (1), old city of Pensacola, in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said property does not exceed the sum of fifteen hundred dollars.

THOS. C. WATSON.

Sworn to and subscribed before me Dec'b'r 10th, 1885.

[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,

vs.

GEORGE S. WELLS & N. NICHOLS.

Peter Knowles, being duly sworn, says he has been a resident of the city of Pensacola, Florida, for forty years last past, during the whole of which time he has been extensively engaged in the business of buying and selling real estate; that he knows and is familiar with that part of lot one (1), old city of Pensacola, in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said property does not exceed the sum of fourteen hundred dollars.

PETER KNOWLES.

Sworn to & subscribed before me Dec'b'r 10th, 1885.

[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,

vs.

GEORGE S. WELLS and N. NICHOLS.

Wm. Fisher, being duly sworn, says that he is a practicing attorney-at-law in the city of Pensacola, Florida, and has for seven years last past paid particular attention to the sale and rental of real

estate in the city of Pensacola, and that he is familiar with the value of real estate in said city; that he knows and is familiar with that part of lot one (1), old city of Pensacola, in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said property does not exceed the sum of fifteen hundred dollars.

WM. FISHER.

Sworn to & subscribed before me Dec'b'r 10, 1885.
[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

In the Supreme Court of the United States, Northern District of Florida.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,
vs.
S. NICHOLS *et als.*

Wm. H. Knowles, being duly sworn, says he has resided in Pensacola, Florida, for twenty-eight years next before this date, and that he is acquainted with the value of real estate in said city, having for nine years been a real estate agent in Pensacola; that he is familiar with the property in controversy in this suit, to wit, that portion of lot one (1), square four (4), on Palafox street, in the city of Pensacola, beginning at a point 64 feet and 6 inches north of the southeast corner of said lot, being the corner of Main and Palafox streets, running westerly on line parallel with the north line of Main street 41 feet and 3 inches; thence south on line parallel with Palafox street fourteen feet; thence east on line parallel with line of Main street 41 feet and 3 inches; thence north on line of Palafox street 14 feet to starting point; that the value of said property does not exceed the sum of fourteen hundred dollars.

WM. H. KNOWLES.

Sworn to and subscribed before me January 1st, 1886.
[SEAL.] WM. FISHER,
Notary Public, State of Fla.

In the Supreme Court of the United States, Northern District of Florida.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,
vs.
S. NICHOLS, GEO. S. WELLS, *et als.*

J. C. Pebley, being duly sworn, says he has resided in Pensacola, Florida, for ten years next before this date, and that he is acquainted with the value of real estate in said city, having for eight years been a dealer and owner of real estate in Pensacola; that he

is familar with the property in controversy in this suit, to wit, that portion of lot one (1), square four (4), on Palafox street, in the city of Pensacola, beginning at a point 64 feet and 6 inches north of the southeast corner of said lot, being the corner of Main and Palafox streets, running westerly on line parallel with the north line of Main street 41 feet and 3 inches; thence south on line parallel with Palafox street 14 feet; thence east on line parallel with line of Main street 41 feet and 3 inches; thence north on line of Palafox street 14 feet to starting point; that the value of said property does not exceed the sum of twelve hundred and fifty dol-dollars.

J. C. PEBLEY.

Sworn to & subscribed before me this 31st of December, 1885.
[SEAL.] WM. FISHER,
Notary Public, State of Florida.

Wells, Mark Fuller, et al. vs. *Hutchinson, Adm'r, No.* 660.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,
vs.
GEORGE S. WELLS & MARK FULLER.

Thomas C. Watson, being duly sworn, says that his occupation is that of a real estate agent in the city of Pensacola, Florida, and that he is familiar with the value of real estate in said city; that he knows that part of lot one (1), oid city of Pensacola, in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said property does not exceed the sum of one thousand dollars.

THOS. C. WATSON.

Sworn to & subscribed before me Dec'b'r 10, 1885.
[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

In the Supreme Court of the United States, Northern District of Florida.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,
vs.
MARK FULLER, GEO. S. WELLS, *et als.*

J. C. Pebley, being duly sworn, says he has resided in Pensacola, Florida, for ten years next before this date, and that he is acquainted with the value of real estate in said city, having for eight years been a dealer and owner of real estate in Pensacola; that he is

acquainted with the value of the property in controversy in this suit, to wit, "that portion of lot one (1), in square four (4), in the city of Pensacola, beginning at a point 32 feet and 6 inches from the southeast corner of said lot on corner of Maine and Palafox streets; thence westwardly forty-one feet and three inches on line parallel with the north line of Main street; thence south on line parallel with Palafox street twenty-six feet; thence east 41 feet and 3 inches on line parallel with Main street to Palafox street; thence north on the west line of Palafox street 26 feet to starting point;" that the value of said property does not exceed the sum of nineteen hundred dollars.

J. C. PEBLEY,

Sworn to & subscribed before me this 31st of December, 1885.
[SEAL.] WM. FISHER,
Notary Public, State of Florida.

In the Supreme Court of the United States, Northern District of Florida.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,
vs.
MARK FULLER *et als.*

Wm. H. Knowles, being duly sworn, says he has resided in Pensacola, Florida, for twenty-eight years next before this date, and that he is acquainted with the value of real estate in said city, having for nine years been a real estate agent in Pensacola; that he is acquainted with the value of the property in controversy in this action, to wit: That portion of lot one (1), in square four (4), in the city of Pensacola, beginning at a point 32 feet and 6 inches from the southeast corner of said lot, on corner of Main and Palafox streets; thence westwardly 41 feet and 3 inches on line parallel with the north line of Main street; thence south, on line parallel with Palafox street, 26 feet; thence east 41 feet and 3 inches, on line parallel with Main street, to Palafox street; thence north, on the west line of Palafox street, 26 feet, to starting point; that the value of said property does not exceed the sum of twenty-six hundred dollars.

WM. H. KNOWLES.

Sworn to & subscribed before me January 1st, 1886.
[SEAL.] WM. FISHER,
Notary Public, State of Florida.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the estate of James Rushton, Dec'd,
vs.
GEORGE S. WELLS & MARK FULLER.

Wm. Fisher, being duly sworn, says that he is a practicing attorney-at-law in the city of Pensacola, Florida, and has for seven years

last past paid particular attention to the sale and rental of real estate in the city of Pensacola, and that he is familiar with the value of real estate in said city; that he knows and is familiar with that part of lot one (1), old city of Pensacola, in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said property does not exceed the sum of one thousand dollars.

WM. FISHER.

Sworn to & subscribed before me Dec'b'r 10, 1885.
[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,
vs.
GEORGE S. WELLS & MARK FULLER.

Peter Knowles, being duly sworn, says he has been a resident of the city of Pensacola, Florida, for forty (40) years last past, during the whole of which time he has been extensively engaged in business of buying and selling real estate in said city, both for himself and acting for others; that he knows and is familiar with that part of lot one (1), old city of Pensacola, in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said property does not exceed the sum of one thousand dollars.

PETER KNOWLES.

Sworn to & subscribed before me Dec'b'r 10th, 1885.
[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

Wells, White et al. vs. *Hutchinson, Adm'r, No.* 661.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,
vs.
GEORGE S. WELLS & JOHN WHITE.

Thomas C. Watson, being duly sworn, says that his occupation is that of a real estate agent in the city of Pensacola, Florida, and that he is familiar with the value of real estate in said city; that he knows that part of lot one (1), old city of Pensacola in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said property does not exceed the sum of fifteen hundred dollars.

THOS. C. WATSON.

Sworn to & subscribed before me Dec'b'r 10th, 1885.

[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,

vs.

GEORGE S. WELLS & JOHN WHITE.

Peter Knowles, being duly sworn, says that he has been a resident of the city of Pensacola, Florida, for forty (40) years last past; that during that time he has had large transactions in real estate in said city both for himself and as agent for others; that he has been a real estate dealer in said city for the past forty (40) years, and knows and is familiar with that part of lot one (1), old city of Pensacola, in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said property does not exceed the sum of sixteen hundred dollars.

PETER KNOWLES.

Sworn to & subscribed before me Dec'b'r 10, 1885.

[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

In the Supreme Court of the United States.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,

vs.

GEORGE S. WELLS & JOHN WHITE.

Wm. Fisher, being duly sworn, says that he is a practicing attorney-at-law in the city of Pensacola, Florida, and has for seven years last past paid particular attention to the sale and rental of real estate in the city of Pensacola, and that he is familiar with the value of real estate in said city; that he knows and is familiar with that part of lot one (1), old city of Pensacola, in controversy in this action; that the value of said property, inclusive of mesne profits, is less than five thousand dollars; that the value of said *party* [property] does not exceed the sum of fifteen hundred dollars.

WM. FISHER.

Sworn to & subscribed before me Dec'b'r 10, 1885.

[SEAL.] JAMES L. ROCHE,
Commissioner Circuit Court.

In the Supreme Court of the United States, Northern District of Florida.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,

vs.

JOHN WHITE *et als.*

Wm. H. Knowles, being duly sworn, says that he has resided in Pensacola, Florida, for twenty-eight years next before this date, and that he is acquainted with the value of real estate in said city, having for the last nine years been a real estate agent engaged in business in Pensacola; that he is familiar with the property in controversy in this suit, to wit, that portion of lot one (1), square four (4), in the city of Pensacola, beginning at a point 85 feet 6 inches south of the northeast corner of said lot on Palafox street; thence running west 41 feet and 3 inches; thence south 16 feet and 6 inches; thence east 41 feet and 3 inches to Palafox street; thence north 16 feet and 6 inches to the beginning; that the value of said property does not exceed the sum of seventeen hundred dollars.

WM. H. KNOWLES.

Sworn & subscribed before me January 1st, 1886.

[SEAL.] WM. FISHER,
Notary Public, State of Fl'a.

In the Supreme Court of the United States, Northern District of Florida.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,

vs.

JOHN WHITE *et als.*

J. C. Pebley, being duly sworn, says he has resided in Pensacola, Florida, for ten years next before this date, and that he is acquainted with the value of real estate in said city, having for eight years been a dealer and owner of real estate in Pensacola; that he is familiar with the property in controversy in this suit, to wit, that portion of lot one (1), square four (4), in the city of Pensacola, beginning at a point 85 feet 6 inches south of the northeast corner of said lot on Palafox street; thence running west 41 feet and 3 inches; thence south 16 feet and 6 inches; thence east 41 feet and 3 inches to Palafox street; thence north 16 feet and 6 inches to the beginning; that the value of said property does not exceed the sum of fourteen hundred dollars.

J. C. PEBLEY.

Sworn to & subscribed before me Dec'b'r 31st, 1885.

[SEAL.] WM. FISHER,
Notary Public, State of Florida.

Wells, White, Mueller, et al. vs. *Hutchinson, Adm'r, No.* 662.

In the Supreme Court of the United States, Northern District of Florida.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,

vs.

HENRY MUELLER *et als.*

W. H. Knowles, being duly sworn, says he has resided in Pensacola, Florida, for twenty-eight years next before this date, and that he is acquainted with the value of real estate in said city, having for nine years been a real estate agent in Pensacola; that he is familiar with the property in controversy in this suit, to wit, that portion of lot one (1), in square four (4), in the city of Pensacola, according to Pintado plan, beginning at a point on the east line of said lot sixty-seven feet and 6 inches north of the southeast corner of said lot, which corner is the corner of Main and Palafox streets; thence running west 41 feet 3 inches parallel with the north line of Main street; thence south on line parallel with Palafox 35 feet; thence east 41 feet and 3 inches to Palafox street on a line parallel with Main street; thence north on line of Palafox street to starting point; that the value of said property does not exceed the sum of thirty-five hundred dollars.

WM. H. KNOWLES.

Sworn to & subscribed before me January 1st, 1886.

[SEAL.] WM. FISHER,
Notary Public, State of Fla.

In the Supreme Court of the United States, Northern District of Florida.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, dec'd,

vs.

HENRY MUELLER *et als.*

Thomas C. Watson, being duly sworn, says that he has resided in Pensacola, Florida, for fifteen years next before this date, and that he is acquainted with the value of real estate in said city, having for several years last past been engaged in the business of real estate, buying and selling same in Pensacola; that he is familiar with that part of lot one (1), square four (4), in controversy in this action, and that the value of said property does not exceed the sum of fifteen hundred dollars.

THOS. C. WATSON.

Sworn to & subscribed before me January 1st, 1886.

[SEAL.] WM. FISHER,
Notary Public, State of Florida.

In the Supreme Court of the United States, Northern District of Florida.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,

vs.

HENRY MUELLER *et als.*

J. C. Pebley, being duly sworn, says he has resided in Pensacola, Florida, for ten years next before this date, and that he is acquainted with the value of real estate in said city, having for eight years been a dealer and owner of real estate in Pensacola; that he is familiar with the property in controversy in this suit, to wit, that portion of lot one (1), in square four (4), in the city of Pensacola, according to Pintado plan, beginning at a point on the east line of said lot sixty-seven feet and 6 inches north of the southeast corner of said lot, which corner is the corner of Main and Palafox streets; thence running west 41 feet 3 inches parallel with the north line of Main street; thence south on line parallel with Palafox street 35 feet; thence east 41 feet and 3 inches to Palafox street on line parallel with Main street; thence north on line of Palafox street to starting point; that the value of said property does not exceed the sum of twenty-six hundred dollars.

J. C. PEBLEY.

Sworn to & subscribed before me this 31st of Dec'b'r, 1885.

[SEAL.] WM. FISHER,

Notary Public, State of Florida.

In the Supreme Court of the United States, Northern District of Florida.

W. H. HUTCHINSON, Adm'r *de bonis non* of the Estate of James Rushton, Dec'd,

vs.

HENRY MUELLER *et als.*

Peter Knowles, being duly sworn, says he has resided in Pensacola, Florida, for forty years next before this date, and that he is acquainted with the value of real estate in said city, having for forty years been a dealer and owner of real estate in Pensacola; that he is familiar with the property in controversy in this action, to wit, part of lot one (1), square four (4), fronting on Palafox street, Pensacola, Florida, and that the value of said property does not exceed the sum of seventeen hundred dollars.

PETER KNOWLES.

Sworn to & subscribed before me Dec'b'r 31st, 1885.

[SEAL.] WM. FISHER,

Notary Public, State of Florida.

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FILED.
DEC 31 1885
JAMES. H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 254.

JOSEPH K. JOHNSON,

vs.

W. H. HUTCHINSON, Admr., *de bonis non.* of JAMES RUSHTON.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE NORTHERN DISTRICT OF FLORIDA, FIFTH CIRCUIT.

Brief of C. C. Yonge, Sr., Attorney for Defendant in Error.

BRIEF AND ARGUMENT.

C. C. YONGE, Sr.,

Attorney for the Defendant in Error.

NEW YORK:
N. Y. ECONOMICAL PRINTING CO., 24 VESEY STREET.
1885.

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 254.

JOSEPH K. JOHNSON,

vs.

W. H. HUTCHINSON, Admr., *de bonis non.* of JAMES RUSHTON.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE NORTHERN DISTRICT OF FLORIDA, FIFTH CIRCUIT.

Brief of C. C. Yonge, Sr., Attorney for Defendant in Error.

This case is submitted on brief under a written consent on file signed by the attorneys for the respective parties.

This is an action of ejectment for the recovery of Lot 1, Square 4, according to the Pintado plan of the City of Pensacola, brought in the State Court and the defendants below on the 12th day of October, 1881, filed their plea of "not guilty."

After removal of the case to the U. S. Court, the defendants on the 7th March, 1882, filed additional pleas as follow. See p. 7 of Record.

1st. That twenty years had elapsed since the death of James Rushton.

2d. That it does not appear from the proper records that an administrator *de bonis non* on said estate of James Rushton was ever appointed.

3d. That said suit was not brought within seven years next after the accruing of the *right* of action.

4th. Judgment of former recovery.

The plaintiff on same 7th March, 1881, joined issue on the plea filed on the 12th October, 1881, and also on the plea of former recovery filed 7th March. 1882, and demurred to the first plea filed 7th March, 1882, that twenty years had elapsed since the death of James Rushton, as constituting no defence.

And as to the second plea of March 7th, the plaintiff demurred on the ground that it did not tender a material issue, that it was uncertain and indefinite, and that if the intention was to deny the character in which the plaintiff sued that it did so only by indirection.

And to the third plea of 7th March, plaintiff demurred on the ground that it did not set forth any bar by limitation as the limitation only began from the accruing of the *cause* of action.

These demurrers were sustained, and the issues on the plea of "not guilty" and former recovery being submitted to a jury they were found for the plaintiff, and judgment was entered accordingly. See pp. 9 and 10.

The defendants on the 9th March moved for a new trial on grounds stated on p. 18, which motion was denied, and thereupon the defendants sued out their writ of error.

ARGUMENT.

The plaintiffs in error in their brief admit that as no bill of exceptions containing the evidence on which the verdict was based was taken, that there is nothing before this Court for its consideration except such errors as are apparent on the record.

This Court will not review the refusal of the Court below to grant a new trial.

See 18th Wal., 342.

"Where a case is brought here on writ of error under the 22d section of the Judiciary Act and there is no bill of exceptions, agreed statement or special verdict in the transcript, the general rule is that the judgment will be affirmed, as is shown by repeated decisions."

Pomeroy's Lessee *vs.* the Bank of Indiana. 1st Wal., 592.

The issues on the pleas of "not guilty" and former recovery having been found by the jury in favor of the plaintiff below, the only question for consideration is error in sustaining the demurrers to the 1st, 2d and 3d pleas of the 7th March.

1st. The lapse of twenty years since the death of Rushton certainly constitutes no bar to the action. It may or may not have raised a presumption for the consideration of the jury, under an appropriate plea, that the estate had been settled, but that is a very different question from constituting a bar to the action.

2d. The allegation in the second plea "that it did not appear from the proper records that no administrator *de bonis non* of Rushton's estate had ever been appointed" is

not appropriate language by which to raise the single issue whether W. H. Hutchinson was the administrator *de bonis non* on the estate.

Under a plea so framed the question might be made as to what was meant by "the proper records."

And also what constituted an *appointment* of an administrator *de bonis non* as well as the main question whether Hutchinson was administrator.

In point of fact no administrator is appointed in a case like this under the laws of Florida.

The Sheriff of the county is made *by law ex officio* administrator on the estates of all decedents where no administrator is appointed within six months after the death, and no action by the Probate Court is required except to fix his responsibility which is done by an order requiring him to take charge of the assets of the person deceased.

See McClellan's Digest of Florida Laws, p. 81, sec. 17.

It was very easy for the defendant to have tendered a distinct issue, if he had desired to do so, by pleading in the usual form that W. H. Hutchinson was not administrator *de bonis non*, on which plea the plaintiff would have joined issue, and on the evidence contained in the certified copy of the order of the Judge of Probate found on page 7 of the record, such issue would have been found in favor of the plaintiff.

3d. The ruling of the Court on the demurrer to the 3d plea seems, by the brief of the plaintiffs in error, to be acquiesced in, as they do not in any way refer to it.

It is therefore, perhaps, not necessary that I should do so, and I will only make this remark, that the language of the plea in alleging that the suit was not brought within seven years after the accruing of the *right* of action, only

means, and was so understood, that the suit was not brought within seven years next after the accruing of the *right of the plaintiff to the property*, and this, of course, constitutes no defense to the action.

But if it was the purpose of the defendant to make a special plea of the Statutes of Limitations, then the plea was demurrable even had it been expressed in appropriate language, for the defense sought to be presented was embraced in another plea on which issue was joined, to wit, the plea of "Not guilty;" and the special plea would have been stricken out on the motion even without a demurrer.

The language of the Florida Statute of Limitations is that "No action for the recovery of real property or of the possession thereof shall be maintained unless it appears that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question within seven years before the commencement of such action."

See McClellan's Digest, page 731, sec. 2.

The very question of the bar by the statute was therefore involved in the right of recovery, and was fully covered by the plea of "Not guilty," and under that plea the defendant had the full benefit of whatever there was in it. The rule is well established in Florida that any special plea of the Statute of Limitations to an ejectment suit is bad.

See Wade *et al.*, *vs.* Doyle, 17th Fla., 552.
Winkoph *vs.* Dibble, 18th Fla., 24.

I think it is apparent that there is no error in any of the above rulings of the Court below.

C. C. YONGE, SR.,
Attorney for the Defendant in error.